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MONTANA LEGISLATIVE HISTORY

Chapter 571 19 89

Bill H _____ S 342 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 21	✓ C	Hearing Date(s)	Feb 09	✓ C
	Mar 23	✓ C		Feb 15	✓ C
		C			C
		C			C
Date Out	Mar 27	✓ C		Feb 15	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

2/04	REFERRED TO TAXATION		
2/09	HEARING		
2/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	50	0
2/17	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO TAXATION		
3/14	HEARING		
4/07	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
4/10	2ND READING CONCURRED AS AMENDED	73	25
4/11	3RD READING CONCURRED	75	23
	RETURNED TO SENATE WITH AMENDMENTS		
4/13	2ND READING AMENDMENTS CONCURRED	48	0
4/15	3RD READING AMENDMENTS CONCURRED	45	0
4/18	SIGNED BY PRESIDENT		
4/18	SIGNED BY SPEAKER		
4/19	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 608 EFFECTIVE DATE: 7/01/89		

SB 342 INTRODUCED BY HOFMAN, S., ET AL.
PROHIBIT DISPLAY AND DISSEMINATION OF MATERIAL HARMFUL TO MINORS

2/04	INTRODUCED		
2/04	REFERRED TO JUDICIARY		
2/09	HEARING		
2/15	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	50	0
2/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO JUDICIARY		
3/21	HEARING		
3/27	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED AS AMENDED	98	0
3/29	3RD READING CONCURRED	97	0
	RETURNED TO SENATE WITH AMENDMENTS		
4/06	2ND READING AMENDMENTS CONCURRED	49	0
4/10	3RD READING AMENDMENTS CONCURRED	49	0
4/13	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 571 EFFECTIVE DATE: 10/01/89		

SB 343 INTRODUCED BY VAN VALKENBURG, ET AL.
ARBITRATION FOR MUNICIPAL POLICE OFFICERS ACT

2/04	INTRODUCED		
2/04	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/09	HEARING		
2/13	COMMITTEE REPORT--BILL NOT PASSED		
2/13	ADVERSE COMMITTEE REPORT ADOPTED	39	10
2/14	RECONSIDERED PREVIOUS ACTION	27	19

SENATE BILL NO. 342

INTRODUCED BY HOFMAN, HANNAH, LEE, WALLIN, CLARK, KEATING, HARDING, DEBRUYCKER, KELLER, HOFFMAN, ELLISON, ZOOK, RICE, ANDERSON, SPRING, HIMSL, AAFEDT, VAUGHN, OWENS, THOMAS, PINSONEAULT, CRIPPEN, HARP, RASMUSSEN, GAGE

IN THE SENATE

FEBRUARY 4, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 15, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 16, 1989	PRINTING REPORT.
FEBRUARY 17, 1989	SECOND READING, DO PASS.
FEBRUARY 18, 1989	ENGROSSING REPORT.
FEBRUARY 20, 1989	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 27, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 97; NOES, 0.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1989	ON MOTION, CONSIDERATION PASSED UNTIL THE 77TH LEGISLATIVE DAY.
APRIL 6, 1989	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 10, 1989	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

LC 1355/01

SENATE BILL NO. 342

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE DISPLAY AND DISSEMINATION OF MATERIAL HARMFUL TO MINORS; AMENDING SECTIONS 45-8-201 AND 45-8-203, MCA; AND REPEALING SECTION 45-8-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Definitions. As used in [this act], the following definitions apply:

(1) "Harmful to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) it has a predominant tendency to appeal to a minor's prurient interest in sex;

(b) it depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(c) it lacks serious literary, scientific, artistic, or political value for minors.

(2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape.

(3) "Minor" means an unmarried person under 18 years of age.

(4) "Negligently" means consciously disregarding a risk or existence of circumstances of which a person should be aware to the degree that the risk deviates from the conduct of a reasonable person concerning:

(a) the character and content of any material or performance that is reasonably susceptible to examination; and

(b) the age of the minor. However, an honest mistake will constitute an excuse from liability if the defendant made a reasonable bona fide attempt to ascertain the true age of the minor.

(5) "Newsstand" means a stand that distributes or sells newspapers or magazines.

(6) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, the showing of any portion of the female breast below the top of the nipple with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state.

(7) "Performance" means any motion picture, film,

INTRODUCED BILL
SB 342

videotape, phonograph record, compact disk, tape recording, preview, trailer, play, show, skit, dance, or other exhibition played or performed before an audience of one or more, with or without consideration.

(8) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

(9) "Reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or a governmental or educational identification card or paper rather than relying solely on the oral allegations or apparent age of the minor.

(10) "Sexual conduct" includes:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted;

(b) masturbation, excretory functions, or lewd exhibition of uncovered genitals;

(c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.

(11) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

NEW SECTION. **Section 2. Public display or**

dissemination of material harmful to minors. A person having custody, control, or supervision of any commercial establishment or newsstand may not negligently:

(1) display material that is harmful to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed material harmful to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view;

(2) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any material that is harmful to minors; or

(3) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is harmful to minors.

NEW SECTION. **Section 3. Penalties.** (1) A person who is convicted of violating [section 2] is guilty of a misdemeanor and may be fined an amount not less than $500 or imprisoned for not more than 1 month, or both.

(2) Each day that a violation of [section 2] occurs or continues constitutes a separate offense and is punishable as a separate violation.

(3) Every act, thing, or transaction prohibited by

[section 2] constitutes a separate offense to each item, issue, or title involved and is punishable as a separate offense.

(4) For purposes of [section 2], multiple copies of the same title, monthly issue, volume and number issue, or other identical material constitutes a single offense.

Section 4. Section 45-8-201, MCA, is amended to read:

"**45-8-201. Obscenity.** (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;

(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals to the prurient interest in sex;

(ii) portrays conduct described in subsection (2)(a)(i), (ii), or (iii) ~~of this section~~ in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence shall be admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or

(e) purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions which are more restrictive as to obscenity than the provisions of this section and ~~45-8-202~~ [section 2]."

Section 5. Section 45-8-203, MCA, is amended to read:

"45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. "Employee" does not include a manager of the motion picture

theater.

(2) No employee is liable to prosecution under 45-8-201 and ~~45-8-202~~ [section 2] or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public."

NEW SECTION. **Section 6. Repealer.** Section 45-8-202, MCA, is repealed.

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45, chapter 8, part 2, apply to [sections 1 through 3].

-End-

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 9, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Bob Brown, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail

Members Excused: Senator Tom Beck

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: Chairman Crippen announced that the three bills dealing with pornography would be heard concurrently since they were all sponsored by Senator Hofman. He asked that all present remain quiet and courteous throughout the hearing.

HEARING ON SENATE BILLS 307, 342 AND 263

Presentation and Opening Statement by Sponsor: Senator Sam Hofman of Manhattan, District 38, opened the hearing reading a prepared statement. (See Exhibit 1A) The purpose of Senate Bill 263 was to prohibit certain sexual conduct where alcohol was sold; Senate Bill 307 prohibited exhibiting or disseminating obscenity and Senate Bill 342 Prohibited the sale of material harmful to minors. He asked Bryan Asay, an attorney, to explain the bills as part of the opening. Mr. Asay went through the bills section by section explaining them in detail. Senator Hofman distributed copies of Landmark U.S. Supreme Court Decisions on Obscenity. (See Exhibit 1C)

List of Testifying Proponents and What Group they Represent:

Len Munsel (C.D.L.), Tempe, AZ attorney
Terry Crooks, Libby, Montana
Dr. Mark Mozer, Helena, Clinical Psychologist
Russ Osenbach, Probation Officer, Boulder, MT
John Burk, Deer Lodge, MT, employee at the state prison
Don Johnson, Missoula, MT
Steve Carlson, Bozeman, MT, First Lutheran pastor
Randy Vogel, Billings, MT policeman
Tom McGillvray, Billings, MT, Yellowstone C.D.
Aubyn Curtis, Fortine, MT
John Ortwein, Montana Catholic Conference
Terry Crooks, Libby, MT, V. Pres., Montana Citizens for Decency
Carl Hatch, Helena
Bryan Asay, Montana Family Coalition
Ted Lympus, Kalispell
Mignon Waterman
Don Allison
Phil Strope, Helena Attorney for the Montana Tavern Association

List of Testifying Opponents and What Group They Represent:

Robert Scott, American Civil Liberties Union (ACLU) and on behalf of himself

Testimony:

Len Munsel spoke about the effects of pornography on people. He felt there was a strong link between pornography and sexual deviance. He presented a paper to the committee. (Exhibit 1B). He read explanations of the bills and of their constitutionality. He said that 44 states have passed this legislation. He said that no one is attempting to ban "Playboy", but were attempting to ban hard-core pornography. He spoke of the Miller case and of the Polk decision and of their relation to these bills.

He said the language in SB 307 came from a Michigan Decision. Pornography is a big money-maker for organized crime, he told the committee, and he felt these bills would discourage that industry from basing in Montana. He read statements from law enforcement personnel regarding distribution of pornography which indicated that organized crime had a network throughout the country controlling 85 to 90% of the distribution.

Senate Bill 263's proposed language has been upheld in three separate court cases, said Mr. Munsel. He spoke to the amendment which would be proposed by the Montana Tavern Association.

Terry Crooks showed a video of a Ted Bundy interview, in which Mr. Bundy told of the disastrous effects that pornography had on his life. (See Exhibits 2 -- videos)

Dr. Mark Moser read written testimony into the record. (See Exhibit 3)

Jon Berg said he was alarmed at the pornography on the market today. He read written testimony into the record (See Exhibit 4, p. 1) He also read, in part, letters from inmates at the prison that told of the effect that pornography had on their lives (Exhibit 4, pages 2 through 7) He read some of the titles of books that were hard core pornography. He said it was difficult to keep pornography out of the hands of inmates and stated that it lead to great difficulty. There is currently a lawsuit against the prison for $750,000 for not rehabilitating a prisoner who sodomized, raped and killed the boy in Libby.

Don Johnson read and distributed copies of a letter from Michael Scolatti, a licensed clinical psychologist who deals with sex offenders (Exhibit 5, page 1) He also submitted a letter from Captain Larry Weatherman of the Missoula County Sheriff's department (Exhibit 5, pages 2 and 3) and read it to the committee.

Steve Carlson presented copies of a paper entitled "Montana Religious Alliance for Decency Communique on Pornography and Obscenity" (See Exhibit 6). He said the organization represents about 200,000 church members within Montana.

Randy Vogel presented written testimony to the committee. (See Exhibit 7)

Tom McGillvray presented written testimony to the committee. (See Exhibit 8)

Aubyn Curtiss testified in favor of the bill. (See Exhibit 9)

John Ortwein read testimony into the record (See Exhibit 10)

Terry Crooks gave testimony to committee members from people

who were unable to attend the hearing. (Exhibit 11, pages 1 through 15) He said citizens have the right to protect the provide a safe environment for their families. He showed some slides showing perverse cartoons to the committee.

Carl Hatch gave written testimony (Exhibit 12) to be placed into the record favoring the bills.

Bryan Asay urged passage of the bills .

Mignon Waterman supported the legislation.

Don Allison, presented a letter from Ted O. Lympus, County Attorney from Flathead County to the committee in support of the legislation (Exhibit 13).

Phil Strope said his association represents about half of the beverage licensees in the state and is concerned about Senate Bill 263 which separates his industry out from others relating to sexual acts where alcohol is sold. He said the tavern owners do not condone the sale of pornography or sexual acts. He said that his industry wished to offer an amendment to SB 263, amending it so that anyone who does business with the public will be charged with the crime and will pay the penalty -- not just the liquor industry. That would include bookstores, movie houses, etc. who commit offenses in this area, he added.

A petition signed by 725 persons (Exhibit 15) was left with the committee favoring the three bills.

Opponents: Robert Scott said the ACLU's position on all three bills is that they oppose them as they exist and will challenge them if they are enacted into law. He commented on the "largely emotional" testimony of the proponents who "admittedly" were attempting to illegalize any sexual material whatsoever. He addressed the constitutionality issue, definitions of "sexual material," and Supreme Court decisions, copies of which were placed into the record. (Exhibit 16). He felt the law was very broad and was probably on the edge of constitutionality. The application of the law could be challenged, as well as on its constitutionality, he said. Definitions of "a reasonable person" were questionable in his estimation. He felt the bills were censorship. He said the bills didn't address violence.

Testifying for himself, he said the bills would be costly to administer. He said the bills would result in a series of

law suits and told the committee that it costs money to police magazine stands, as well as to prosecute, appeal etc. As to kiddy porn, he said that was already illegal. Passing the bills won't result in an absence of this material, he told the committee. He suggested that the committee could pass the bills in a form that would eliminate kiddy porn and violent material, but he asked that the bills not be passed in their present form because they would be an invitation to litigation.

Questions From Committee Members: Senator Pinsoneault asked Mr. Munsel to address the Montana Tavern Association comments. Mr. Munsel said he agreed with the proposed amendment. He said that the laws as determined by the Supreme Court would have to be taken into consideration in working on the amendment. He said the amendment, as proposed, seemed to regulate nude dancing and sexual conduct that was not tied in with the state's power to regulate the sale of alcohol. There were also situations under which alcohol is sold and is regulated under the 21st Amendment. He felt the amendment proposed by Mr. Strope was unconstitutional.

Senator Mazurek said, if we have to rely on the 21st Amendment, wouldn't it be unconstitutional as an infringement on the freedom of speech. He asked for an explanation on what he meant. Mr. Munsel answered that, in the regulation of nude dancing, it was a prohibition on nude dancing and sexual conduct (not tied into obscenity) that occurs in the statute regarding licenses to selling liquor. It was not necessary to meet the three-part Miller standard for obscenity, he said. If something was obscene under Miller, he said, it would be outside the protection of the 1st Amendment. When the state gets into the area of regulating a type of sexual activity occurring in public, such as nude dancing that is not obscene under Miller, the nude dancing may be determined to have serious artistic value and may not be prosecuted. If it is tied in under the state's authority with the 21st Amendment, different material can be regulated than under the obscenity statute.

Senator Yellowtail asked if Ted Bundy plead guilty to the offenses for which he was convicted. Senator Pinsoneault said no, that he was convicted by a jury.

Senator Pinsoneault asked if Mr. Crook accepted on face value everything that Ted Bundy said in the video

presentation. Mr. Crook said nobody pretended that he was completely reliable.

Senator Yellowtail said the committee was being asked to accept the video as credible evidence. Mr. Crook said he expected the situation as a whole would have to be considered, and would have to be evaluated the same as any evidence given, such as the U. S. Attorney General's report. It concluded, after a year's study, that obscenity did have an affect.

Senator Pinsoneault asked how long Mr. Scott had practiced law. Mr. Scott answered since 1982. He said he had done criminal law prior to being employed by the state. He said he was not on administrative leave to work on this testimony.

Senator Pinsoneault asked Mr. Scott if he had done criminal defense work. He answered yes. Senator Pinsoneault asked why he felt Mr. Bundy's testimony would be fabricated. Mr. Scott thought Mr. Bundy might be hoping for last-minute clemency.

Senator Halligan asked about the constitutionality of definitions. Mr. Munsel said he disagreed that they were unconstitutional, that the bills were copied after other states laws which existed in other states. He said the ACLU always "wants you to believe you are on the cutting edge" of constitutionality.

Senator Halligan asked Mr. Munsel if the language proposed had been accepted by circuit courts or the Supreme Court. The answer was yes.

Senator Mazurek said he had understood that 44 states had similar laws to all three of the bills. Mr. Munsel said that only applied to the obscenity bill. A number of states have regulations on nude dancing and establishments that sell alcohol.

Senator Mazurek asked if those laws had been challenged and the answer was yes.

Senator Mazurek commented that Mr. Scott had criticized the bills as being too broad and too vague. He asked how he would suggest amending them. Mr. Scott said he was not prepared to do that at the time. He had only been asked to testify the day before and had not had time to

prepare or study all the statutes completely. He said he would be willing to work with anybody.

Senator Yellowtail asked Senator Hofman what his intent was regarding the sale of "Playboy" magazine. He said he had no intention of stopping the sale of "Playboy" because it does not meet the Miller definitions of being obscene.

Senator Yellowtail asked if one particular issue might contain material that might meet the qualifications for obscenity. Senator Hoffman said that could happen, but overall, the magazine did not.

Senator Yellowtail said he had heard of a controversial book called "Our Bodies Ourselves" and wondered if that would be considered obscene. Mr. Crook said it would actually be protected by SB 307 because it contains serious scientific, literary, political or artistic value. For the same reason, "Playboy" has not been defined as obscene.

Closing by Sponsor: Senator Hofman closed the hearing by reading a written closing statement (Exhibit 16). He also announced that there would be an opportunity for the viewing of other videos relating to the pornographic legislation and situations. In regard to possible amendment, he asked that the committee be fair and careful. He said the law was made broad intentionally because he wanted the intent of the bills to be quite clear. He said that the Supreme Court had defined what was obscene and he wanted the pornographers to know those definitions. He thought the Miller decision was fair. As to frequency of prosecution resulting from the bills, Senator Hofman agreed that would happen to offenders. He said the law presently provided for prosecution of lawbreakers. He urged serious consideration of the bills.

Announcements: Chairman Crippen told the committee that Senator Galt had requested all Standing Committee Reports by the following Monday. He asked that any interested parties work with Valencia on amendments and present proposals at an Executive Session to be held on Saturday morning.

ADJOURNMENT

Adjournment At: 1:00 p.m.

SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj

minrj.209

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-9-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK			✓
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. # 1A
DATE 2-9-89
BILL NO. SB 263, 307, 342

SENATE BILLS 263, 307 AND 342

Senator Sam Hofman

Pornography erodes the moral values of our society. It contributes to an ever increasing number of sexual assaults against children and women and is far different from the "Girlie" magazines so many of us think occupy our newsstands.

We know that child sexual abuse rose by 175 percent between 1981 and 1985. We know the rape rate in the United States has increased more than 700 percent since 1933. We are aware of studies that reveal that 77 percent of child molesters of girls admitted initiating the sexual behavior they had seen in pornographic displays. We have been told of a Michigan State Police study which demonstrated that of 38,000 sexual assault cases on file in Michigan 41 percent involved pornography just prior to the act or during the act. We know of a study released by the University of New Hampshire in 1984 that showed that the states with the highest readership of pornographic magazines also had the highest rape rates. And we know of Ted Bundy's admission that pornography fueled his murderous rages.

How much more scientific data do we need before we believe what our common sense has been telling us all along? The evidence is in and it is overwhelming. The experts, such as Doctor Victor Cline, have made it clear: pornography is highly addictive; as time goes on rougher and rougher material is necessary to get a sexual high; gradually what was once awful and shocking becomes acceptable and commonplace; and then those who look at pornography begin to do the things they have seen.

There are times when I ask myself "what has happened to us?" Why are so many of our young people doing and getting involved in so many terrible things? Why are they rushing to sell themselves into bondage? Why are they so bent on destruction?

Maybe the answer to those questions is what Plato said three centuries before Christ when he remarked: "What is honored in a country will be cultivated there."

What is it that we honor in this country?

In 1985 pornographers in America made 8 billion dollars - more than the legitimate film and record industries combined. Up to 20,000 "adult" bookstores and 14,000 video

SENATE JUDICIARY
EXHIBIT NO. 1A, p. 2
DATE 2-9-89
BILL NO. SB 263

cassette suppliers feed the hunger for more. More than 400 porno magazines appear annually catering to a growing market for kiddie-porn, sadomasochism, incest and Nazi-porn. And 80 percent of the retail porn industry is owned by organized crime.

What is it that is being cultivated in this country?

Are we providing a lesson in First Amendment principles or conditioning a whole generation with slasher films that bombard their consciousness with alternating erotic and sadistic images that ultimately lead to pain and difficulty for so many of our sons and daughters.

The time to stop this shameful mess cannot be put off any longer. We have fought for our way and quality of life with much less evidence to indicate its peril than that which threatens so many of those among us because of the spread of pornography.

~~We cannot let this cup pass -- I hope and pray you will look upon this legislation favorably~~.

WE AS LEGISLATORS, HAVE THE RESPONSIBILITY OF PASSING LAWS GIVING THE PEOPLE, THROUGH THEIR LAW ENFORCEMENT AGENCIES AND PROSECUT THE TOOLS THAT THEY NEED TO MAKE MONTANA A CLEAN, PURE, AND SAFE PLACE TO WORK, PLAY AND LIVE IN PEACE.

WE CANNOT LET THIS CUP PASS. & HOPE AND PRAY THAT YOU WILL PASS THIS LEGISLATION.

SENATE JUDICIARY
EXHIBIT NO. 18
DATE 2-9-89
BILL NO. SB 263

PORNOGRAPHY EFFECTS: EMPIRICAL EVIDENCE

By: Victor B. Cline, Ph D.
Dept. of Psychology
University of Utah, Salt Lake City, Utah. 84112

R-4

DEFINING PORNOGRAPHY

To ascertain if obscenity or pornography have the power to corrupt, injure, or inspire harmful behavior--we first need to define it. The word pornoography is a "lay term" used in common parlance to usually mean "graphic and explicit depictions of sexual activity." Whereas obscenity is a legal term which comes to us from the U.S. Supreme Court's most recent definition (rendered in 1973, Miller vs. California). Here for something to be found legally obscene a jury (representing a cross section of the community) must find three things wrong with it:

(1) It must appeal to a prurient (sick, morbid, shameful, or lustful) interest in sex.

(2) It must be patently offensive (e.g. go beyond contemporary community standards with regards to depictions of sexual content or activity).

(3) Taken as a whole it must lack serious literary, artistic, political or scientific value.

The material has to fail all three tests before it can be found obscene in the eyes of the law and any penalties proscribed.

This means that something could be regarded as "pornographic" but still not be legally obscene--such as such as explicit sex films used to teach medical students about human sexuality or even a film or book with high artistic and/or literary value which had explicit sexual content.

ITS EDUCATIVE IMPACT

There is a myth or belief held by many Americans that pornography (or obscenity)--while it may be vulgar and tasteless--is still essentially harmless and has no real effect on the viewer and can certainly do no real harm.

However--for someone to suggest that pornography cannot have an effect on you is to deny not only its unique educative impact but to deny the whole notion of the educative process itself including all learning everywhere. If you say that a pornographic book can't effect you, then you also have to say that Karl Marx's Das Kapital or the Bible or the Koran also have had no effects on their readers. And thats nonsense. But, of course, books and other media do have an effect on their consumers. Consider a single book by Ralph Nader, Unsafe at any Speed, it set in motion a whole series of events leading to legislation which is now undoubtedly saving thousands of lives yearly on the highway and which put General Motor's Corvair out of business. Shrewd businessmen don't spend

over ten billion a year on television advertising if it didn't sell deodorant, Chevies, and Pampers.

CLINICS USE SEX FILMS TO CHANGE BEHAVIOR & ATTITUDES

Many hundreds of sex counseling clinics in the U.S. daily make use of explicit sexual pictures, films, books, and videos to change couples' sexual behavior, belief and attitudes. Other centers use graphic sex films to recondition the sexual behavior of sex offenders. However these are as carefully selected and prescribed as a physician would in writing a prescription for a particular drug to treat a specific illness or infection. No responsible doctor would ever send a patient to a pharmacy and say, "Take anything or everything available." And no responsible sex therapist would ever say to a patient who had a specific focused sexual problem, "Go down to the adult bookstore and help yourself to whatever you want."

You cannot logically argue that the kind of change which goes on in a sex counseling clinic can go only one way (just make people healthy). It can go the other way too. Some of it can harm people by suggesting through modeling and imitative learning--inappropriate, unhealthy, or even illegal kinds of sexual activity--which some suggestible viewers may later act out. We have a great deal of information gained from treating sex offenders suggesting that pornography is often used as a facilitator in acquiring a deviation. (See: The Sexual Addiction, by Patrick Carnes, Compcare Publications, Minneapolis, 1984).

WHY SEX EDUCATION IN THE SCHOOLS?

Or consider also the spread of sex education instruction throughout schools in the U.S. The assumption is that you can change attitudes and behavior about sex through some form of teaching and instruction. If you assume that this is so then you have to admit to the possibility that films, magazines and books which model rape and the dehumanization of famales in sexual scenes are another powerful form of sex education. And thus educate too. Anyone who has seen much pornography knows that most of it is made by men for male consumption, is extremely sexist, gives a great deal of misinformation about human sexuality--especially about female sexual nature and response and that most of it is devoid of love, relationship, responsiblity, mentions nothing about the risks of sexually transmitted diseases, and for the most part dehumanizes both males and females. It in a sense does dirt on sex. It falsely represents it. And much of it is very hostile to the female participants who are often denigrated and humiliated.

WHY SOME CLAIM "NO EFFECTS"

Many of the educated commentators or even "experts" that I know who suggest that pornography has no effects--really don't believe what they are saying or they will reluctantly admit to the possibility of harm from just "violent pornography." In many cases they are pretending "not to know" because of their concern about censorship, and loss of First Amendment rights. Thus for for some of them the issue is really political. It also has to do with their personal values--and much less with what the objective truth is. They fear the tyranny of a moralist

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minority who might take away their rights to view pornography, ~~then later~~ maybe, free speech and expression.

PORNOGRAPHY EFFECTS: DATA FROM CLINICAL CASE STUDIES

There are a variety of evidences suggesting risk and the possibility of harm from being immersed in repeated exposure to pornography. These data come from: (a) empirical laboratory type studies, (b) field studies, and (c) clinical case history data from the offices of clergy and clinics of professional healthcare personnel treating individuals with sexual dysfunctions.

I am a clinical psychologist. I have treated over many years approximately 240 sex offenders or individuals (95% male) with sexual illnesses. These include rapists, child molesters, exhibitionists, voyeurs, sado-masochists, fetishists, plus other kinds of compulsive sexual acting out. With very few exceptions porngraphy has been a contributor in the acquisition of their deviation. However regardless of what the specific nature of their deviation was I found a near universal four factor syndrome common to nearly all of my clients with almost no exceptions.

The first thing that happened was an addiction effect. They got hooked. Once involved in obscene materials they kept coming back for more and still more. The material seemed to provide a very powerful sexual stimulant or aphrodisiac effect followed by sexual release most often through masturbation. The pornography provided very exciting and powerful fantasies which they frequently recalled to mind and elaborated on in their fantasies. One of my patients, even for a thousand dollars, could not stay away from pornography for 90 days--he was so deeply addicted. And in his case he desperately wanted to get out of his dependency on this material because of its negative effect on his marriage.

Secondly there was an escalation effect. With the passage of time they required more explicit, rougher, more deviant and "kinky" kinds of sexual material to get their "highs" and "sexual turn ons." It was reminiscent of those individuals afflicted with drug addictions. In time there is nearly always an increasing need for more of the stimulant to get the same effect as one got initially. If their wives or girl friends were involved with them they pushed their partners, over time, into doing increasingly bizarre and deviant sexual activities. In many cases this resulted in a rupture in the relationship when the woman refused to go further--often leading to much conflict, separation or divorce.

Being married or being in relationship with a willing sexual partner didn't solve their problem. Their addiction and escalation was mainly to the powerful sexual imagery in their minds. They often preferred this accompanied by masturbation--to sexual intercourse itself. This nearly always diminished their capacity to love and express affection to their partner. The fantasy was all-powerful...much to the chagrin and disappointment of their partner. Their sex drive had been diverted to a degree away from a their spouse. And the spouse could tell and often felt very lonely and rejected.

The third thing that happened was desensitization. With material (in

books, magazines, or film/videos) that were originally perceived as shocking, taboo breaking, repulsive or immoral--though still sexually arousing--in time came to be seen as acceptable and commonplace. The sexual activity they witnessed (no matter how gross or deviant) in time became legitimized. There was increasingly a sense that "everybody does it" and this gave them permission to also do it--even though, possibly, illegal and contrary to their previous moral beliefs and standards.

The fourth thing that occurred was an increasing tendency to ACT OUT SEXUALLY the behaviors viewed in the pornography they had been repeatedly exposed to--including compulsive promiscuity, exhibitionism, group sex, voyeurism, frequenting message parlors (when this had not been their pattern before), having sex with minor children, rape, inflicting pain on themselves or partner during sex, etc. This behavior quickly grew into a sexual addiction which they found themselves hooked on and unable to change or reverse--no matter what the consequences in their life.

IF PORNOGRAPHY IS IN THE HOME CHILDREN FIND IT

I also found a spill-over effect where pornography used by adults very frequently gets into the hands of children living in the home or neighborhood where adults are using it.

Example: A mother brought to my office her pregnant 13 year old daughter. The girl and her 14 year old boyfriend had discovered the father's secret cache of pornography and proceded to engage in a variety of sexual acts stimulated by and in direct imitation of these materials which they reviewed and used over many months.

Example: From my private practice. Two brothers 9 and 10 stumbled across their parents X-rated video tapes and secretly played them for many months while their dad and mom were at work. They later forced two younger children in the home and a neighbor boy to view them, stripped them naked forced dirt, sticks and small rocks into their rectums, forced them to engage in oral sex, did anal sex on them and threatened to shoot them with a BB gun if they told. This abuse continued for several years before finally being discovered when the younger abused children reported it.

Example: Reported to the U.S. Attorney General's Pornography Commission, page 785 of their Final Report: "My daughters also had an experience with an eleven year old neighbor boy.... porno pictures what he had were shown to the girls and to the other children on the block. Later that day, he invited my daughters into his house to play video games, but then tried to imitate the sex acts in the photos with my eleven year old daughter as his partner; my other daughter witnessed the incident."

Example: A mothers testimony to the 1986 U.S. Attorney General's Commission on Pornography, p. 797 of that Final Report. "My son was murdered on August 6, 1981, by the greed and avarice of the publishers of Hustler magazine. My son read the article "Orgasm of Death," set up the sexual experiment depicted therein, followed the explicit instructions of the article, and ended up dead. He would still be alive today were he not enticed and incited into this action by Hustler magazine's "How to do" August 1981 article, an article which was found at his feet and which

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directly caused his death."

EARLIER EMPIRICAL STUDIES ON PORNO EFFECTS

If we look at field and empirical studies on pornography's effects we might cite evidence going back to the 1970 Presidential Commission on Obscenity and Pornography Report whose technical reports I carefully reviewed and later wrote a book about (e.g. Where Do You Draw the Line).

In a sophisticated commission financed study of seven different populations of subjects comprising 365 people Drs. Davis and Braucht (reported in Vol VII, of the Commission's Technical Reports, US Govt. Printing Office, 1971) assessed the relationship between exposure to pornography and moral character, deviance in the home and neighborhood, and sex behavior. In their study, impressive in its rigorous methodology and statistical treatment they concluded that "One finds exposure to pornography is the strongest predictor of sexual deviance among the early age of exposure subjects." They also found that there was a "positive relationship between sexual deviance and exposure to pornography at all ages of exposure levels: In the early age of exposure (to pornography) subgroup, the amount of exposure was significantly correlated with a willingness to engage in group sexual relations, frequency of homosexual intercourse, and 'serious' sexual deviance; and there were trends for the number of both high school heterosexual partners and total homosexual partners to be positively related to (pornographic) exposure.

Correlation alone never demonstrates a causal relationship--however, it does permit a reasonable hypothesis. Because the researchers had partialed out the contribution of other key variables in this study, the possibility of causation (of harm via pornography exposure) was highly suggested.

NATIONAL POLL OF MENTAL HEALTH WORKERS

In a national poll of mental health professionals by Drs. M. Lipkin and D.E. Carns cited (1970, Winter) in the University of Chicago Division of Biological Sciences and the Pritzker School of Medicine reports--254 psychotherapists reported in their clinical practices cases in which pornography was found to be an instigator or contributor to a sex crime, personality disturbance or antisocial act; and another 324 professionals suspected such relationships in cases with which they had worked. And while many other professionals had not found such relationships in their private practice experience this data cannot be dismissed as irrelevant or not suggestive of the potential for negative consequences as a result of exposure to pornography.

CONDITIONING INTO DEVIANCY WITH PORNOGRAPHY: THE RACHMAN STUDIES

Other powerful cause-effect data come from the conditioning laboratories of investigators such as Dr. Stanley Rachman (see, "Experimentally induced 'sexual festishism': A replication and development." Psychological Record, 18:25, 1968) who demonstrated that, with the use of highly erotic pictures, sexual deviations could be created in individuals. He was actually able to condition (repeatedly) 100% of

his male subjects into sex deviancy. Additionally, the work of McGuire (see, "Sexual deviations as Conditioned Behavior: A Hypothesis," Behavior Research Therapy, 2:185, 1965) suggests that exposure to special sexual experiences (which could include witnessing pornography) then masturbating to the fantasy of this exposure can sometimes later lead to participation in deviant sexual acts. The massive literature on therapy for sex deviates suggest that their sexual orientation can frequently be changed (reconditioned) with the use of explicit sex films as a therapeutic tool. If these data are valid then one must also allow for the possibility that deliberate or accidental exposure to either pornography or deviant real life sex experiences can facilitate the conditioning of the individual into sexual aberrations.

ALL SEX DEVIATIONS ARE LEARNED BEHAVIOR

The best evidence to date suggests that all sexual deviations are learned. None are inherited. As McGuire explains it, as a man repeatedly masturbates to a vivid sexual fantasy (introduced by porn or maybe a real life experience) as his exclusive outlet, the pleasurable experiences endow the deviant fantasy (rape, molesting children, injuring one's partner while having sex, etc) with increasing erotic value. The orgasm experienced then provides the critical reinforcing event for the conditioning of the fantasy preceding or accompanying the act.

Other related studies by Evans ("Masturbatory fantasy & sexual deviation" in Behavioral Research & Therapy, 1968, 6:17) and Jackson ("A case of voyeurism treated by counter conditioning" in Behavior Research & Therapy, 1969, 7:133) support this thesis. They find that deviant masturbatory fantasy very significantly affected the habit strength of the subject's sexual deviation. McGuire indicates that any type of sexual deviation can be acquired in this way, that it may include several unrelated deviations in one individual and cannot be eliminated even by massive feelings of guilt. His paper cites many case histories to illustrate this type of conditioning.

MCGAUGH'S RESEARCH ON MEMORY

The work of psychologist James L. McGaugh at the University of California, Irvine needs mention here (see: "Preserving the presence of the past" in Feb 1983, American Psychologist, p. 161). His findings (over simplifying somewhat) suggest that memories of experiences which occurred at times of emotional arousal (including sexual arousal) get locked into the brain by the chemical epineprine and are difficult to erase, This may partly explain pornography's addicting effects. Powerful sexually arousing memories of experiences from the past keep intruding themselves back on the mind's memory screen serving to stimulate and erotically arouse the viewer. If he masturbates to these fantasies he reinforces the linkage between sexual arousal and orgasm with the particular scene repeatedly rehearsed on his memory screen.

One might quickly see the risks involved with large numbers of males being exposed to the following film. This 8 mm motion picture film marketed out of Los Angeles depicts two Girl Scouts in their green uniforms selling cookies from door to door. At one residence they are invited in by a mature, sexually aggressive adult male, who proceeds to

seduce them and subject them to a number of unusual and extremely explicit sexual acts, all shown in greatest detail. The girls are depicted as eagerly enjoying this sexual orgy. This film is what is usually termed hard-core pornography. This is the kind of pornographic stimulus/film that the male can play again and again for his sexual pleasure.

If the research of Rachman, McGuire, McGaugh and hundreds of other investigators in the area of human learning has any meaning at all, it would suggest that such a film could be dangerous and could potentially condition some male viewers to having reoccuring sexual fantasies (vividly imprinted into the brain) which they might repeatedly masturbate to then later be tempted to act out as sexual advances toward female minors--especially if they were in Girl Scout uniforms.

THE RESEARCH ON AGGRESSIVE PORNOGRAPHY (PORNO-VIOLENCE)

In recent years there has been a considerable body of research on aggressive pornography--a lot of it on hard R rated films. Many are also broadcast on cable TV. The typical film shows nude females or females in sexually arousing situations being raped, tortured, etc. The results of this research suggest the possibility of conditioning male viewers into associating sexual arousal with inflicting injury, rape, humiliation, or torture on females. Where these films are available on videotapes (which most are) these can be repeatedly viewed in the privacy of one's residence and masturbated to with the associated risks of negative or antisocial conditioning noted above.

Drs. Malamuth and Donnerstein noted in their 1984 book, Pornography and Sexual Aggression, "Certain forms of pornography (aggressive) can affect aggresssive attitudes toward women and can desensitize an individual's perception of rape. These attitudes and perceptions are furthermore directly related to actual aggressive behavior against women." or "These results suggest, again, that aggressive pornography does increase aggression against women." (p. 67 and 54)) In films where the woman is depicted as saying that she enjoys being raped they found an increased male acceptance of interpersonal violence against women and it tended to increase the male's acceptance of rape myths (such as believing that women enjoy rape). These author conclude that, "There can be relatively long-term anti-social effects of movies that portray sexual violence as having positive consequences."

The literature on aggressive pornography is rather overwhelming in its consistency in suggesting a variety of harms or possibility of antisocial outcomes from exposure to this material. This is not too unexpected after 40 years of research on film and TV violence coming to essentially the same conclusion (see Rubinstein, "Television & Behavior" in American Psychologist, 1983, 38, p. 820).

THE EFFECTS OF "NON VIOLENT" PORNOGRAPHY

The issue which has caught the attention lately of some behavioral scientists doing work in this area is whether its the violence or the sex thats doing most of the "harm" when it is fused together in so called aggressive pornography or porno-violence. Or some will say, "Just eliminate the violence--the sex is OK."

If we look at non-violent pornography totally devoid of violence we might well ask what about its effects. First we might indicate several examples of non-violent pornography which most therapists as well as common citizens would not regard as healthy models of sexual behavior: (1) Child pornography, (2) Incest type porn (e.g. mother seducing son, daughter seducing father, older brother seducing younger sister, etc.), (3) Sex with animals, (4) Group sex (e.g. 3 on 1, group mate swapping, etc.), (5) Sex which humiliates and denigrates women and their sex role in man/woman relationships (but without overt violence), (6) Pornography such as that involving the eager girl scout teenagers having 2 on 1 sex with the adult male, etc. Or (7) Obscene films which present a massive amount of misinformation or gross distortion about human sexuality. All of the above while lacking violence still have the potential of having negative effects on some viewers because of their modeling unhealthy sex role behavior or giving misinformation about human sexuality.

Additionally we do have some empirical research on the effects of straight adult non-violent porn by researchers Dolf Zillman and Jennings Bryant (see "Symposium on Media Violence and Pornography" Toronto, 1984, Media Action Group, and testimony given to U.S. Attorney Generals Commission on Pornography, Sept 1985, Houston). This research suggests that when experimental subjects are exposed to repeated presentations of hard core non-violent adult pornography over a six week period they (a) develop an increased callousness toward women, tend to (b) trivialize rape as a criminal offense, to some it was no longer a crime at all, (c) developed distorted perceptions about sexuality, (d) developed an appetite for more deviant, bizarre or violent types of pornography (escalation). Normal sex no longer seemed to "do the job," (e) led to a devaluation and depreciation of the importance of manogamy and a lack of confidence in marriage as either a viable or lasting institution and (f) came to view nonmonogamous relationships as normal and natural behavior.

In a further study reported to the Commission by Dr. Bryant 600 American males and females of junior high age and above were interviewed about their "out in real life involvement with pornography." He found that 91% of the males and 82% of the females admitted having been exposed to X-rated hard core pornography. Two thirds of the males and 40% of the females reported wanting to try out some of the sexual behaviors they had witnessed. And 25% of the males and 15% of the females admitted actually doing some of the things sexually they had seen in the pornography within a few days after exposure. This powerfully suggests the modeling effect or "imitative learning" effect that even non violent pornography has on human behavior. Additionally it was found that massive (e.g. 6 weeks) exposure to pornography was able to change the attitudes and feelings of their subjects in the direction of making sexual improprieties and transgressions seem less bad, the victims of such transgressions were perceived to suffer less and be less severely wronged. In other words they had become to some degree desensitized to the breaking of sexual tabus as a result of the pornography exposure.

As Dr. Jennings Bryant comments, "If the values which permeate the content of most hardcore pornography are examined, what is found is an almost total suspension of the sorts of moral judgment that have been espoused in the value systems of most civilized cultures. Forget trust.

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Forget family. Forget commitment. Forget love. Forget marriage. Here, in this world of ultimate physical hedonism, anything goes. If we take seriously the social science research literature in areas such as social learning or cultivation effects, we should expect that the heavy consumer of hardcore pornography should acquire some of these values which are so markedly different from those of our mainstream society, especially if the consumer does not have a well developed value system of his or her own." And, of course, this is just what Dr. Bryant found in his research reported above.

DR. DIANA RUSSELL'S RESEARCH

In a 1982 study by Mills College (Calif.) sociologist Diana Russell ("Rape & Marriage") she found that the depiction and dissemination of the "rape myth" (in pornography) was a significant element in reducing inhibitions to the use of violence, habituating both males and females to the idea of rape and also accepting sexual aberrance as "normal" behavior. She found that once the seeds of deviant behavior were planted in the male fantasy, the men she studied were inclined to act out their fantasies. She found that both the fantasies that were acted out, as well as the mere conceptualization of these deviant fantasies as viable behaviors, led to considerable conflict and suffering on the part of both males and females, particularly in their sexual relationships with intimate partners.

SEX OFFENDERS USE OF PORNOGRAPHY

In another study by Dr. W. Marshall (see "Report on the Use of Pornography by Sexual Offenders", Federal Dept of Justice, Ottawa, Canada, 1983) almost half of the rapists that he studied used consenting sex pornography to arouse themselves preparatory to seeking out a victim to rape.

It should be emphasized that in these few brief pages it is not possible to review any more than a few representative studies and summarize some of the trends of current as well as past research on pornography's effects. But these should still be sufficient to give the reader a sense of the field and answer for him or herself the question of pornography's potential to change behavior and attitudes in adults as well as children.

PORNOGRAPHY'S IMPACT ON PSYCHOSEXUAL DEVELOPMENT

Other kinds of data which bear on these issues which should be noted come from physicians treating heavy consumers of pornography who see syndromes of arrest of development in their psychosexual growth. An example would be psychiatrist Harold Voth on the faculty of the Karl Menninger School of Psychiatry at Topeka, Kansas who sees pornography as typically depicting perverse sex, degradation through sex, transient meaningless sex, and violent sex--all of which is a reflection of incomplete and abnormal human development. As he notes, healthy mature people do not behave in these ways.

However, he notes, there are millions of people who appear manifestly healthy, but who also harbor substantial latent sickness which are

residues of developmental arrests or abnormal development which may find expression in sexual perversions. Thus viewing pornography, most of which depicts perverse behavior, activates the developmental sexual arrests which exist in millions of people. He sees these people as developing a kind of addiction for pornography thus receiving many exposures to it over time. These pornographic stimuli, therefore, promote regressive behavior rather than more mature behavior.

He sees such exposure as especially damaging to the young who are on the threshold of entering into an active sexual life. For them these vital processes should be guided toward greater maturity, not retrogressively toward perversion or transient meaningless sex. As Dr. Voth states it, "Society and individuals alike can only be harmed when we "legitimize" abnormal behavior."

He notes how some men become dissatisfied with their wives whom they believe to be inadequate (and vice versa) after viewing the exaggerated sexual prowess as depicted by the typical pornographic movie. He suggests that society has the responsibility to protect itself from itself, that is from the elements within society which harm it. He sees pornography as appealing to sexuality at its worst and since mature sexuality is so very essential to the heterosexual bond and to family life, steps should be taken to clearly identify pornography as unhealthy with many risks associated with its consumption.

DIAL-A-PORN

With the sponsorship of the U.S. Dept of Justice I was commission to conduct a pilot field study on the effects of Dial-A-Porn on children. In January of 1985 I interviewed a number of children and their parents who had become involved with this type of pornography.

With Dial-A-Porn when one makes a call it is usually answered by a very sexy seductive sounding female (actually a recording) who talks directly to the caller about how bad she wants to have sex with him now. She then with panting voice tells him all of the things she wants to do to him such as oral sex, vaginal sex, anal sex, etc etc. There may be a second young woman on the line and they may talk about having sex together as well as with the caller. They may mention having a sex marathon (dozens of partners) with all of the explicit details. In some cases bondage is part of the scenario (having sex while gagged, handcuffed and leashed at the neck--suggesting that sex is better if it "hurts so well--don't stop." Sex with animals is also included as well as group sex (3,4, or 5 men on one girl), lesbianism, rape, inviting a married male to have sex with the "baby sitter," a school teacher having sex with her students, inviting the caller to urinate in the woman's face, degrading the woman as a slut and trash while having sex with her, inviting beatings, torture, and general physical abuse as part of the sexual activity.

The messages keep changing every hojr or so and new phone numbers are given out in order to encourage continuing call backs.

Any youngster of any age can tap into these porno lines and get these messages from any place in the country. All they need is a phone number

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to call. And these numbers are very easy to come by (on the playground of nearly every school in America). If parents put a "block" on their phone to prevent these calls--the children merely use another phone.

With every one of the children we studied we found an "addiction effect." In every case without exception the children (girls as well as boys) became hooked on this sex by phone and kept going back for more and still more. They did not cease until found out. None of them. In some cases more than 300 long distance calls were made by particular children. Disclosure usually occurred when the parents received an enormous phone bill. This alerted them that something was amiss. And only after investigation (often having to call the number which was printed on the phone bill) did the parents becomed aware of what their children were calling and listening to. There was always a major confrontation. The children were usually made to pay the long distance phone costs as well as given a variety of chastisements, lectures, and/or punishments.

Where both parents worked or where there was a single parent in the home working this meant that they had to leave behind "latch key children" who were not monitored or supervised for a number of hours during the day. This created a very difficult problem in controlling phone use. In the case of one one-parent family the young son still continues to make Dial-A-Porn calls and the distraught mother has found no way to get him to stop. Threats, physical abuse, nothing works.

I found that nearly all of the children had clear memories of a great deal of the content of the calls they heard. I also found that almost without exception the children felt guilty, embarrassed, and ashamed about their involvement with Dial-A-Porn. In nearly all cases there were some problems and tensions generated in the parent-child and family relationships because of their making these calls.

I have also interviewed some children where as a result of their hearing these kinds of Dial-A-Porn messages they engaged in sexual assaults on other children. One 12 year old boy in Hayward, California listened to Dial-A-Porn for nearly 2 hours between church meetings one Sunday afternoon in the church. Some time later he sexually assaulted a 4 year old girl in his mother's Day Care Center. He had never been exposed to pornography before, was sexually chaste, and not a behavior problem in the home. He had never heard or knew of oral sex before listening to Dial-A-Porn. And this was how he assaulted the girl, forcing oral sex on her in direct imitation of what he had heard on the phone. I later interviewed a number of children in Michigan where similar sexual assaults occurred, males in their early teens "raping" younger females as a result of listening to Dial-A-Porn. All of these children might be considered victims.

CLINICAL CASE STUDIES

Another kind of evidence on negative effects comes from the private practice of psychotherapists, counselors, and ministers. Here we come up face to face with real people who are in some kind of deep trouble or pain. These are not dull statistics involving means and standard deviations or correlation coefficients. I'll cite several as examples.

The 46 year old deputy mayor of one of America's largest cities one afternoon a few years ago attended a porn-theatre. While watching the sex film he became so turned on that he started to sexually assault or molest a patron setting next to him. The individual turned out to be an undercover city vice-squad officer. The deputy mayor was arrested, booked and found guilty in a subsequent trial. This distinguished public servant left office shamed and humiliated--his career in shambles.

A 36 year old married male, college educated, a professional man, very successful financially, had an addiction to pornography, masturbation, and frequenting massage parlor where he had paid sex. He had an excellent marriage, four children and was very active in his church where he assumed important positions of responsibility. While he felt guilty about his engagement in illicit sex which was contrary to the teachings of his church and had the potential of seriously disturbing his marriage if found out--he frequently and compulsively continued to do that which at a rational level he did not want to do. His problem came to light when he infected his wife with a venereal disease. This created many serious and disturbing consequences in his life.

A 30 year old single male, religiously active and very committed to his faith had a history of pornography addiction. He was too shy and backward to ask adult females on dates. But he developed relationships with his 4 and 7 year old nieces and their girlfriends which culminated in his repeatedly sexually molesting them. The modeling of explicit sexual activity in the pornography which he consumed helped fuel his sexual interest in these children. Because of his guilt over what he was doing he eventually sought professional help. However his state had a "disclosure law" which required that he be reported to state officials for his history of sexually abusing children. Because of his cooperative attitude and the fact that he sought treatment on his own he was placed on probation, received long term psychotherapy and is now living a normal life.

While this kind of evidence is unlike the neat empirical laboratory study involving mainly college students it still is highly valid, relevant, and throws additional light on the question of harm.

THE MICHIGAN STATE POLICE STUDY

Still another type of evidence comes from a study conductd by Darrell Pope with the Michigan State Police who found that of 38,000 cases of sexual assault on file in Michigan, 41% involved pornography just prior to the act or during the act. (see Paducah Sun-Democrat, "New weapon against obscenity" 3 June 1983).

THE GARY BISHOP CASE

An example of the above comes from Gary Bishop, convicted homosexual pedophile who murdered five young boys in Salt Lake City, Utah in order to conceal his sexual abuse of them who wrote in a letter after his conviction, "Pornography was a determining factor in my downfall. Somehow I became sexually attracted to young boys and I would fantasize them naked. Certain bookstores offered sex education, photographic or art

books which occasionally contained pictures of nude boys. I purchased such books and used them to enhance my masturbatory fantasies. But it wasn't enough. I desired more sexually arousing pictures so I enticed boys into letting me take pictures of them naked. From adult magazines I also located addresses of foreign companies specializing in "kiddie porn" and spent hundreds of dollars on these magazines and films. Such materials would temporarily satisfy my cravings but soon I would need pictures that were more explicit and revealing. Some of the material I received was shocking and disgusting at first, but it shortly became commonplace and acceptable. As I continued to digress further into my perverted behavior, more stimulation was necessary to maintain the same level of excitment. Finding and procuring sexually arousing materials became an obsession. For me, seeing pornography was like lighting a fuse on a stick of dynamite. I became stimulated and had to gratify my urges or explode--all boys became mere sexual objects. My conscience was desensitized and my sexual appetite entirely controlled my actions." He then goes on to tell how he sexually abused then killed his boy victims to keep them silent.

THE FEMINIST POSITION ON PORNOGRAPHY

In reviewing the evidence on the effects of pornography brief mention should be made of the feminist position. Their general view is that lots of scientific studies proving or not proving harm is irrelevant and unnecessary. Pornography on its face is abusive and denigrating especially to women. You don't have to do research to prove that. Sociologist Diana Russell states (in her privately published paper, "Pornography, A Feminist Perspective" Berkeley, 1977), "Pornography is vicious, anti-woman propaganda. It tells lies about us. It degrades women. Pornography is not made to educate but to sell, and for the most part, what sells is a bunch of lies about sex and women. Women are portrayed as enjoying being raped, spanked or beaten, tied up, mutilated, enslaved, or they accept it as their lot as women to be victims of such experiences. In the less sadistic films women are portrayed as turned on and sexually satisfied by doing anything and everything men order them to do and what this involves is for the most part totally contrary to what we know about female sexuality i.e. it is almost totally penis-oriented, often devoid of foreplay, tenderness, or caring, to say nothing of love and romance.

Susan Brownmiller sees much women hatred in pornography, suggesting in her book, Against Our Will, "Pornography, like rape, is a male invention, designed to dehumanize women, to reduce the female to an object of sexual access. The gut distaste that a majority of women feel when we look at pornography comes from the gut knowledge that we and our bodies are being stripped, exposed and contorted for the purpose of ridicule, to bolster that 'masculine esteem' which gets its kicks and sense of power from viewing females as anonymous, panting playthings, adult toys, dehumanized objects to be used, abused, broken and discarded.

The feminists may be right. Insisting on proof of harm may be really an irrelevant issue. We don't set up presidential commissions to decide whether prostitution or houses of prostitution are harmful to the public interest. Each community makes its own decision and handles that in its own way without a lot of fuss. And similarly with false advertising,

perjury, conspiracy, or whether cigarettes can be advertised on TV. These are all issues which in one way or another involve public morality and prohibitions against them have evolved out of English common law as well as common sense legislation using democratic procedures and processes.

IN CONCLUSION

At the present time even though reasonable and fair pornography control statutes exist in nearly every community in the nation as well as at the federal level, prosecution has been feeble or in most cases non-existant because of confusion over the harm issue as well as the concern by some that limiting or prohibiting pornography would lead to censorship of other materials. In my view, and I work with people daily who have major pathology because of their invovlement with pornography--some limits need to be set. Laws need to be enforced or taken off the books. In a sense our "drinking water has been contaminated" and we are getting a lot of casulties--both children and adults. And very few people are doing or saying anything about it. Our people and our country are too precious for us to look the other way, ignore it, or pretend not to know whats happening.

SENATE JUDICIARY
EXHIBIT NO. #1 Cont'd
DATE 2-9-89
BILL NO SB 263

LANDMARK U.S. SUPREME COURT DECISIONS ON OBSCENITY

CASE	DATE	BACKGROUND	CONTRIBUTION TO THE LAW ON OBSCENITY
Rosen v. United States, 161 U.S. 29, 40 L.Ed. 606	1896	Rosen was convicted for mailing an obscene, lewd, and lascivious paper in violation of federal law.	**Scienter.** Proper inquiry under the law was not whether the defendant knew or believed that the paper could be properly characterized as obscene, but whether it was of that character and deposited in the mail by one who knew or had notice, at the time, of its contents.
Roth v. United States, 354 U.S. 476, 1 L.Ed.2d 1498, 77 S.Ct. 1304	1957	Convictions under federal law (18 U.S.C. §1461) for unlawfully mailing obscene material, and California law prohibiting the production of obscene material.	**First Amendment.** Obscenity is not protected. **Obscenity test.** The Court rejected the English test that obscenity could be determined by the effect of isolated passages on "particularly susceptible persons," and established the "prurient appeal" test as judged by the average person applying contemporary community standards. The Court also established the "taken as a whole" requirement. **Prurient.** Defined as shameful, morbid, or "having a tendency to excite lustful thoughts."
Smith v. California, 361 U.S. 147, 4 L.Ed.2d 205, 80 S.Ct. 215	1959	Smith was convicted of violating a Los Angeles obscenity ordinance, which had been construed to impose "strict" criminal liability with no evidence of scienter.	**Scienter.** The complete absence of a scienter requirement is not constitutionally permissible, but the Court indicated that circumstantial evidence that the accused was aware of the book's contents will be sufficient proof of this element of the offense.
Manual Enterprises v. Day, 370 U.S. 478, 8 L.Ed.2d 639, 82 S.Ct. 1432	1962	Alleged violation of federal law prohibiting the mailing of obscene material. (18 U.S.C. §1461)	**Patent Offensiveness Test.** Establishes "patent offensiveness" as part of the obscenity test along with the "prurient appeal" test, and defines "patent offensiveness" as synonymous with "indecency" or affronting "current community standards of decency."

EXHIBIT NO. 1 C, p. 7
DATE 2-9-89
BILL NO. SB 307 et

CASE	DATE	BACKGROUND	CONTRIBUTION TO THE LAW ON OBSCENITY
Ginzburg v. United States, 383 U.S. 463, 16 L.Ed.2d 31, 86 S.Ct. 942	1966	Conviction for mailing obscene literature in violation of federal law. (18 U.S.C. §1461)	**Pandering.** Evidence of the circumstances of production and distribution of the material is relevant to the test of obscenity, especially "patent offensiveness" and "serious value," and where the purveyor's sole emphasis is on the sexually provocative aspects of his publications, that fact may be decisive in the determination of obscenity.
Mishkin v. New York, 383 U.S. 502, 16 L.Ed.2d 56, 86 S.Ct. 958	1966	Conviction for violation of New York obscenity statute.	**Scienter.** The element of scienter is satisfied if it is shown that the accused was in "some manner aware of the character of the material" he attempted to distribute. **Prurient Appeal.** Court rejects the familiar defense argument that material cannot be determined "prurient" if it would disgust and sicken an average person, and holds that the material can be judged according to the prurient interest in sex of a clearly defined deviant sexual group if the material is designed for and primarily disseminated to that group.
Ginsberg v. New York, 390 U.S. 629, 20 L.Ed.2d 195, 88 S.Ct. 1274	1968	Defendant was convicted of violating a New York statute which prohibited selling material which is "harmful to minors" to children.	**Variable Obscenity.** The Court affirmed the statute as constitutional, ruled that the "harmful to minors" provision was not vague, and upheld the state's power to adjust the test of legal obscenity according to the audience of the material thereby permitting the material to be judged in terms of the sexual interests of minors and not according to adult community standards.
Lee Art Theatre v. Virginia, 392 U.S. 636, 20 L.Ed.2d 1313, 88 S.Ct. 2103	1968	Conviction for violation of state obscenity law.	**Search and Seizure.** It is improper for a search warrant to be issued on the conclusory observation of the police office where the magistrate does not inquire into the factual basis for the officer's conclusions and thereby "focus searchingly on the question of obscenity."
Stanley v. Georgia, 394 U.S. 557, 22 L.Ed.2d 542, 89 S.Ct. 1243	1969	Conviction for possession of obscene matter.	**Private Possession.** The mere private possession of obscene matter cannot constitutionally be made a crime.

SENATE JUDICIARY
EXHIBIT NO. 10, p. 3
DATE 2-9-89
BILL NO. SB 363

CASE	DATE	BACKGROUND	CONTRIBUTION TO THE LAW ON OBSCENITY
Roaden v. Kentucky 413 U.S. 496, 37 L.Ed.2d 757, 93 S.Ct. 2796	1973	Arrest and seizure of film without a search warrant having been obtained.	**Search and Seizure.** The seizure of a motion picture film on the grounds that it violates the obscenity statute is unreasonable if not seized under the authority of a constitutionally sufficient warrant.
Miller v. California, 413 U.S. 15, 37 L.Ed.2d 419, 93 S.Ct. 2607	1973	Conviction for distribution of obscene matter in violation of California law.	**First Amendment.** Obscene material is not protected by the First Amendment. **Obscenity Test.** Court outlines a three-part test for determining obscenity which has been adopted under most state statutes and all federal laws. **Community Standards.** The three-part is to be applied in accordance with contemporary local community standards — not national standards. Standards of the state of California were used and approved by the Court.
Paris Adult Theatre I v. Slaton, 413 U.S. 49, 37 L.Ed.2d 446, 93 S.Ct. 2628	1973	Civil action to enjoin the exhibition of two obscene films. The complaints were dismissed in the trial court on the grounds that the films were exhibited to consenting adult only.	**Civil Actions.** Court approved the use of a civil common law action to enjoin the exhibition of obscene matter. **Expert Testimony.** The materials are sufficient in themselves for determining the question of obscenity. **Consenting Adults.** Obscene material does not acquire immunity from state regulation because it is exhibited for consenting adults only. There are numerous state interests supporting obscenity legislation other than the interest of protecting children.
Kaplan v. California, 413 U.S. 115, 37 L.Ed.2d 492, 93 S.Ct. 2680	1973	Conviction for violation of state obscenity statute.	**Written Material.** A book can be constitutionally obscene even though it contains no pictures.
United States v. 12 200-Ft. Reels, 413 U.S. 123, 37 L.Ed.2d 500, 93 S.Ct. 2665	1973	Federal action under 19 U.S.C. §1305(a), which prohibits the importation of obscene articles.	**Right of Privacy.** The holding in **Stanley v. Georgia** is limited to private possession in the home, and does not prevent the control of obscene material in intrastate, interstate, or foreign commerce — there is no right to sell or give the material to others, and the material cannot be imported into this country even if it is for private use only and not for re-distribution.

SENATE JUDICIARY
EXHIBIT NO. 10, P. 4
DATE 2-9-89
BILL NO. SB 307

CASE	DATE	BACKGROUND	CONTRIBUTION TO THE LAW ON OBSCENITY
United States v. Orito, 413 U.S. 139, 37 L.Ed.2d 513, 93 S.Ct. 2674	1973	Violation of federal law (18 U.S.C. §1462) prohibiting the transporting of obscene material by means of a a common carrier.	**Right of Privacy.** Court further limits the decision in **Stanley v. Georgia** by holding that the right to possess obscene material in the privacy of the home does not create a correlative right to receive it, transport it, or distribute it.
Heller v. New York, 413 U.S. 483, 37 L.Ed.2d 745, 93 S.Ct. 2789	1973	Conviction for violation of state obscenity law.	**Search and Seizure.** There is no constitutional right to an adversary hearing prior to seizure of allegedly obscene material where the material is seized pursuant to a warrant for preservation as evidence in a criminal prosecution.
Hamling v. United States, 418 U.S. 87, 41 L.Ed.2d 590, 94 S.Ct. 2887	1973	Violation of federal law prohibiting the mailing of obscene materials. (18 U.S.C. §1461)	**Community Standards.** The decision in **Miller v. California** did not require that a "statewide" standard be used in determining community standards — a smaller geographical area could be used, and the only constitutional requirement is that the material be judged by a juror not according to his own standards but according to the standards of the "community or vicinage from which he comes." **Scienter.** It is constitutionally sufficient that the prosecution show that a defendant had knowledge of the contents of the materials he distributed, and that he knew the character and nature of the materials. **Comparable Material.** The mere availability of similar materials on the newsstands of the community does not automatically make them admissible as tending to prove the nonobscenity of the materials at issue in the trial.
Jenkins v. Georgia, 418 U.S. 153, 41 L.Ed.2d 642, 94 S.Ct. 2750	1974	Conviction for violation of state obscenity law based upon showing of motion picture "Carnal Knowledge."	**Community Standards.** It is permissible to instruct jurors to apply "community standards" without specifying what "community." **Appellate Review.** Independent appellate review of constitutional claims is not precluded by a finding of obscenty in the trial court, even though the questions of what appeals to the "prurient interest" and what is "patently offensive" are essentially questions of fact.

SENATE JUDICIARY
EXHIBIT NO. 10, p. 5
DATE 2-9-89
BILL NO. SB 263
307
342

CASE	DATE	BACKGROUND	CONTRIBUTION TO THE LAW ON OBSCENITY
Smith v. United States, 431 U.S. 291, 52 L.Ed.2d 324, 97 S.Ct. 1756	1977	Conviction for violation of federal law prohibiting the mailing of obscene material. (18 U.S.C. §1461)	**Community Standards.** Court approves a jury instruction which stated that "community standards" are set by what is in fact "accepted" in the community as a whole. Community standards cannot be legislated — this is a question of fact and jurors are entitled to draw on their own knowledge in determining community standards — but the size of the "community" and jury instructions can be legislated.
Splawn v. California, 431 U.S. 595, 52 L.Ed.2d 606, 97 S.Ct. 1987	1977	Conviction of violating state obscenity law.	**Pandering.** Evidence of pandering to prurient interests in the creation, promotion, or dissemination of material is relevant to determining whether the material is obscene.
Ward v. Illinois, 431 U.S. 767, 52 L.Ed.2d 738, 97 S.Ct. 2085	1977	Conviction of violating state obscenity law.	**Patently Offensive Depictions of Sexual Conduct.** Sado-masochistic sexual materials may be proscribed, even though this type of sexual conduct was not expressly included in the **Miller v. California** case in the examples of sexually explicit representations that can be prohibited. The kinds of conduct listed in **Miller** to be utilized in determining patent offensiveness were only examples and were not intended to be exhaustive.
Pinkus v. United States, 436 U.S. 293, 56 L.Ed.2d 293, 98 S.Ct. 1808	1978	Conviction for mailing obscene materials in violation of federal law. (18 U.S.C. §1461)	**Community Standards.** In determining obscenity, children are not to be included as part of the "community." The "community" does include all adults who constitute it, including the most sensitive or susceptible members.
F.C.C. v. Pacifica, 438 U.S. 726, 57 L.Ed.2d 1073, 98 S.Ct. 3026	1978	F.C.C. determination that federal law had been violated by the broadcast of indecent language by a radio station (18 U.S.C. §1464)	**Regulation of Indecent Material.** Because of the pervasiveness of the broadcast media, the F.C.C. has the power to regulate a radio broadcast that is indecent, but not obscene. The Court defines "indecent" as "nonconformance with accepted standards of morality." **First Amendment.** Context is important in determining constitutional protection, and each medium of expression presents special First Amendment problems. Of all forms of communication, broadcasting has received the most limited constitutional protection.

EXHIBIT NO. 1 C.P.B
DATE 2-9-89
BILL NO. SB 307 etc

CASE	DATE	BACKGROUND	CONTRIBUTION TO THE LAW ON OBSCENITY
Cooper v. Mitchell Brothers, 454 U.S. 90, 70 L.Ed.2d 262, 102 S.Ct. 172	1981	Public nuisance abatement action against a motion picture theatre.	**Burden of Proof.** The Constitution does not require use of the "beyond a reasonable doubt" standard of proof in a civil nuisance abatement proceeding even though the obscenity of motion pictures is at issue.
New York v. Ferber, 458 U.S. 747, 73 L.Ed.2d 1113, 102 S.Ct. 3348	1982	Conviction of violation of state law prohibiting the distribution of material depicting sexual performances by children.	**Child Pornography.** States are entitled to greater leeway in the regulation of pornographic depictions of children, and it is not necessary that the materials be determined legally obscene before they can be prohibited.
Brockett v. Spokane Arcades, Inc. 472 U.S. 491, 86 L.Ed.2d 394, 105 S.Ct. 2794	1985	Declaratory and injunctive relief sought against state moral nuisance statute that had yet to be enforced.	**Prurience.** Invalidation of state statute improper; unhealthy lust and lascivious interests can be prurient.
New York v. P.J. Video, Inc., 475 U.S. 868, 89 L.Ed.2d 871, 106 S.Ct. 1610	1986	Alleged violation of state obscenity law — search warrant test.	**Warrants.** Probable cause for search warrant need not require a higher standard for allegedly obscene material.
Arcara v. Cloud Books, Inc., 478 U.S. 697, 92 L.Ed.2d 568, 106 S.Ct. 3172	1986	Interlocutory appeal on issue of closure in a civil action filed against bookstore alleged to present public health nuisance.	**Padlocking.** Closure of adult bookstores found to be used for prostitution not prior restraint.
Pope v. Illinois, 481 U.S. _____, 95 L.Ed.2d 439, 107 S.Ct. 1918	1987	Conviction for violation of state law prohibiting obscenity distribution.	**Value Test.** Community standards of acceptance used to find prurience and patent offensiveness; reasonable person used to find lack of serious value.

Exhibit # 2
Date 2/9/89
SB 263, 307, 342

This exhibit is three video tapes of an interview between Ted Bundy and Dr. James Dobson dated January 24, 1989. The tapes will be housed at the Legislative Council Library until June 30, 1991.

SENATE JUDICIARY
EXHIBIT NO. 3 P3-1
DATE 2-9-89
BILL NO. SB 304 etc.

MARK H. MOZER, Ph.D.
Clinical Psychologist
Suite 4-G
Arcade Building
Helena, MT 59601
(406) 442-0333

February 6, 1989

I am a psychologist in private practice in Helena, and I have consulted at the state prison for eleven years now. I am writing in support of anti-pornography legislation currently under consideration.

No one, of course, knows in any strict scientific sense, whether pornography is cause or effect of molesting or other sexual offenses. Most likely it is both cause and effect. I've talked to hundreds of sex offenders in my consulting work at the prison, and the use of pornography, particularly as a child, is often a part of the developing deviancy. There is no question in my mind that pornography plays a significant contributory role in some sex offenses.

The defenders of various forms of pornography are fond of pointing out that scientific evidence in this area is nevertheless inconclusive. Science will never adequately settle this matter, because one would need to run an experiment, in which we'd compare the sexual development of two groups of children, one of which were given free access to pornography, and one from which it was witheld. Now the rules of science are such that we would actually have to volunteer kids for such a study in order to obtain the proper controls; one couldn't simply try to assess the effects of pornography on kids who had accidently come across the stuff. Rather, we'd have to deliberately give it to one of the groups, and withold it from the other.

I can't imagine that even the most ardent opponent to anti-pornography legislation would consider volunteering their kid for such an experiment. Doesn't that tell us something about our intuitive grasp of the potential harm of pornographic material?

Clearly the problem of sexual offenses is a complex one, stemming from a multiplicity of causes. I can't imagine that the proposed legislation will get us very far in dealing with a runaway problem of molesting and other sexual offenses; a lot more needs to be done. But I'm supporting it because I think that decent folks need to start taking a stand against the advance of sexual trashiness.

SENATE JUDICIARY
EXHIBIT NO. 3 pg 2
DATE 2-9-89
BILL NO. SB 307 etc.

I saw an interesting piece of irony at the prison the other day, which underscores the ludicrous lengths to which we've bent over backwards to the advance of smut. An inmate, a convicted child molester, received a stack of mail-order sadistic child pornography pocket books (fiction, not pictorial). A sample title: No, Daddy, No! The cover of that particular book was a cartoon drawing of a naked pre-pubescent girl, bent over with her butt up in the air, and a man with a nasty grin dripping hot candle wax onto her bottom.

The prison administration wouldn't let him have the books. He is proceeding to sue the prison over denying him access to this filth, and the law requires the state to provide him with a free lawyer for his lawsuit. Now, who is sick here? There is something terribly wrong with a society that feels a need to be impeccably kind and fair toward the most vile of evils. We ought to be ashamed that we've allowed evil to turn our own sense of fairness against us.

I only wish this committee could see some of the sexually predatory people over at Deer Lodge, awaiting release made inevitable by society's refusal to deal with this problem with strength and conviction. There are a lot of hard choices facing us before the tide will be turned on sexual offenses. I think one of the easier choices will be to take a stand against pornographic material. I urge the committee's support of the anti-pornography measures facing us today.

MARK H. MOZER, Ph.D.
Clinical Psychologist

SENATE JUDICIARY
EXHIBIT NO. #4
DATE 2/10/89
BILL NO. SB 307, 342, 263

Distinguished Members of the Legislative Subcommittee on Pornography,

My name is Jon Berg. I am married and am a father of 4 children. I am a native Montanan, a graduate of the Univ. of Montana and am currently employed as the Correctional treatment Supervisor at Mont. State Prison.

I speak to you today as a concerned parent, a Christian, and a state employee. I am alarmed by the availability and the impact of pornography in our society today.

To quote the Reverend Marie Fortune,

"Whether our motivation is religious or philosophical, political or practical, our common interest brings us face to face with the reality of widespread sexual assault and abusive images. The common good is not well served by the collective denial of these facts. We are rather better served by a willingness to engage the complexity of pornography and its relation to sexual assault as a matter of public responsibility. To do less denies women and children their fundamental rights to freedom from

EXHIBIT # 4
DATE 2/10/89
BILL NO. SB 307 etc

fear, harassment, and assault, and further condemns our society to sexual ignorance and distortion."

I believe it is my duty, it is your duty, and the state's responsibility to respond to the invasion of pornography and its devastating effects on our society.

Not all who drink and drive kill and maim. However we as a society and a state are making stiffer laws and penalties for drinking and driving. I applaud the current legislative effort and course of action.

If you acquaint yourselves with the Final Report of the Attorney General's Commission on Pornography I believe you will take a similar course of action.

I work at Montana State Prison where I see the by-product of pornography. Inmates cover their walls with pornography, the inmate canteen (store) sells several pornographic magazines which incite and encourage rape and unnatural activities. Their satellite brings in similar types of programs. This certainly counters any rehabilitative efforts.

(2), p. 34

in their crimes.

SENATE JUDICIARY
EXHIBIT NO. #4 PG 4
DATE 2/10/89
BILL NO. SB307, etc.

I believe that as the state takes steps to impact the availability of pornography and educate its citizens of its dangers than we will see a safer society.

Thank you for your time
Sincerely submitted,
Jon D. Berg
605 W. Missouri Ave.
Deer Lodge, MT. 59722

Currently an inmate is trying to bring in books with the following titles:

1. In Bondage Schoolgirl
2. Schoolgirl in Chains
3. Captive Family in Chains
4. Leather Bound Niece
5. S&M Schoolgirl
6. Bound, Whipped and Raped Schoolgirls
7. Stepdaughter Slave
8. Oh Dad, No Dad

SENATE JUDICIARY
EXHIBIT NO. 14
DATE 2-10-89
BILL NO. SB 207 etc

He is threatening to sue the state for not allowing him access to these books. Our tax dollars will pay for the lawsuit.

Therapists of the Intensive treatment Unit for Sexual Offenders provided me with names of inmates in the program who would be interested in writing a letter to you to inform you of the impact of pornography on their lives. I requested letters of three ... (they are attached)

The Attorney General's Commission has two studies in which over half of rapists say they were "incited to commit an offense" by pornography and forty-two percent of child molesters "implicated pornography"

SENATE JUDICIARY
EXHIBIT NO. # 4 p2
DATE 2/10/89
BILL NO. SB 307 etc

FEBRUARY/6/89

TO WHOM IT MAY CONCERN:

My name is Martin and I am serving a sentence for sexual intercourse without consent, kidnapping and assault in the Montana State Prison, at Deer Lodge.

I was asked if I had anything I wanted to say to you, So I volunteered to write this letter in the hope that pornography can be stopped. If just one victim can be helped by this it will be worth it to me.

To start with I have been using pornography in one form or another for over 20yrs. Over the years it has progressively become more of an addiction to me. I started by reading Police Gazette and other magazines of this nature because of the pictures on the covers. I then went to Playboy and Penthouse because of the stories and pictures. The older I got the more hard core my readings became. I then started to go to strip joints and adult book stores. My quest for the bizarre and erotic became an obsession with me until I ended up here.

For a lot of years I felt it was my constitutional right to read anything I wanted to. I would have fought to the death my right to read it. After coming to prison and getting into the Sex Offender Program here I am now able to see just what pornography has done to me and what it has caused me to do to others. I am not saying that pornography caused me to rape that girl because it didn't. I did that of my own choice, but I am saying that pornography is in the top three reasons for me giving myself permission to do so.

I have had a 100% change in my way of thinking about pornography it is bad, very bad because it gives the reader the idea that it's all right to treat women that way because they enjoy it. Just look at the smiles on the women's faces, read what they are supposed to be saying. Well I say B.S. that is what the makers of pornography want you to think so that they can continue to victimize women and the men who buy it!

Pornography is bad for every one who comes in contact with it right from the women who pose for it up to the Joe on the street who buys it. It gives an offender like me the permission giving statements to do what he does and thinks to himself, "Well look at all of these women who like it in the books, magazines and movies this is what they want so I will give it to them".

I truly believe that if pornography were stopped, the numbers of rapes and assaults of women and children would go down by at least 25% or more, It will not stop it but it sure would start to put the brakes on the large numbers of sexual offenses that are happening in this country today. As I said at the first of this letter if it will help to stop one person from becoming a victim it will all be worthwhile.

SINCERELY YOURS

Martin Sanders

P.S.
IF I MAY BE OF FURTHER ASSISTANCE, PLEASE LET ME KNOW.

MARTIN SANDERS
AO#26136
700 CONLEY LAKE RD.
DEER LODGE, MONTAN 59722

SENATE JUDICIARY
EXHIBIT NO. # 4 pg 6
DATE 2/9/89
BILL NO. 263-307-342

February 6, 1989

To The Legislative Committee on Pornography:

I am 36 years old and am currently incarcerated at Montana State Prison for felony incest. Pornography has been a part of my life since the age of 15. In fact there came a time when pornography became the most important thing in my life.

I started out by looking at magazines and eventually switched to viewing pornographic movies. I lived a life thinking that my masterbating while watching a pornographic movie was the answer to all my problems. I became so addicted to these movies I used to drive 200 miles on a weekend, from my home in Wyoming to Billings, Montana, to fulfill my craving. My family life with my wife and children took a back seat position to my pornographic addiction. From mid week on, I would start to plan and anticipate my weekend fix. And I would not allow anything or anybody to interfere with my plans.

I am currently participating in the Sex Offenders Intensive Treatment Unit here at Montana State Prison. Since being in the ITU I have become aware of how and why I chose to sexualize my life. To combat my own inadequacies towards myself, I chose to watch pornographic movies, visualizing myself as a male porno star. This was my way of getting back at all the women who I thought had control over me, and had the power to make me feel bad about myself.

As I look back at my life I can see where pornography did have a negative effect on my life. Now I realize that for me to watch or look at pornography, is one of my warning signs that I am starting

to fall back into my abusive cycle, seeing women as sexual objects, there for my pleasure.

Sincerely,
Tom Sage

SENATE JUDICIARY
EXHIBIT NO. #1 p.7
DATE 2-9-89
BILL NO. SB 307, 263, 242

FEB. 6, 1989

TO: THE LEGISLATIVE COMMITTEE OF PORNOGRAPHY

I believe pornography has had an impact on my life and my sexual behavior. It separated me from true feelings and emotions and reality. It led me to view women as sexual objects which produced fantasies that would continue to grow into more and more fantasies. Through my years I've felt inadequate, inferior, and feared rejection which made it difficult to relate to many women, so I turned to pornography to release my tension and stress. Pornography grew stronger and stronger as time went on until I became addicted and at times out of control to it's power and control over me. I was avoiding reality and turning to images to satisfy my sexual urges and masturbating knowing I wouldn't be rejected, hurt, or feel inadequate. It only satisfied me temporarily and then I'd feel shame, anxiety, loniness + desperation which would trigger more fantasies and pornography. I tried keeping my addiction a secret and would hide it and sneak it, learning to rush my orgasm or ejaculation, which only made me feel inadequate with women when I preejaculated. I believe it was a factor in my relationships with women. When I felt I couldn't relate to women; or my wife, when I was married, I knew I could substitute with pornography. I believe pornography was a factor in the breakup of my family and divorce 'cause it caused a lack of communication and understanding with my wife so I substituted with pornography, and then also fantasizing of children. My fantasies would keep progressing to more inapropriate ones starting with exposing

and eventually progressing to molesting children. I did have some pocket books of men molesting children in story forms and pictoral, so I'm sure these books are pornographic material even though they weren't of a visual form. I believe the books fueled my fantasies to children which I eventually acted out by exposing and then molesting them. I even showed pornography to children to get them curious and stimulate them in hopes of molesting them. I am very sorry for what I did to hurt and affect my victims because they were beautiful, innocent children and I caused them hurt and pain and confused them emotionally. It was a terrible, sick act on my part and I'm doing all I can to change my behavior. I'm in the intensive treatment program and have only praise for it because it's an excellent program and has been a great deal of help to me and has given me the tools and learning to know myself and to control my deviant behavior, as well as other inappropriate behaviors. This program has put me in touch with my feelings and emotions and I now feel more self esteem, confidence, control, adequate, and more human than I ever have. I can communicate better and trust people more.

I'm writing this letter because I know how pornography has messed up my life and how it also played a factor in my molesting children and how I hurt them so much emotionally and psychologically. I also want to help prevent innocent children from having to go through the fear and hurt of sexual abuse. I also know how I and other children have access of pornography and want to see pornography stopped, and I'm definitely against it in all ways.

Sincerely,
Norb Trigg

SENATE JUDICIARY
EXHIBIT NO. 5, p.1
DATE 2-9-89
BILL NO. SB 307 etc

MICHAEL J. SCOLATTI, Ph.D.
COMMUNITY PHYSICIAN CENTER 2
2831 FORT MISSOULA ROAD, SUITE 305
MISSOULA, MT 59801
Telephone 728-4100, Ext. 5445

To Whom It May Concern:

I am writing this letter in support of the recent anti-pornography legislation that is being introduced in the 1989 session. I am a licensed clinical psychologist in Missoula, approximately 90 percent of my practice is devoted to the assessment and treatment of sexual offenders and sexual abuse victims. I have been working in this field for the past eight years, and have evaluated and/or treated approximately 300 sexual offenders.

I want to offer some of my clinical observations as to the role pornography has played in contributing to sexually abusive behavior. It has been my experience that soft and hardcore pornography has served as a catalyst, or fuel for the deviant fantasies of sexual offenders. Even the softcore publications have impacted some perpetrators to a significant degree. I have treated a rapist-murder whose "sexual education" began at 14 when his mother bought him a subscription to a "softcore" magazine. Even though the pictures were not violent or graphic, this offender used the pictures in his fantasies in which he constructed images of sexual domination and violence. At age 16 this man committed his first rape, at age 22 he murdered his mother. This story is not meant to infer that such exposure to pornography will create a rapist or sexual murder out of an otherwise normal adolescent. There is no one cause for child molesting, rape or murder. However, there is no doubt in my, from my clinical experience, that pornography can significantly contribute to sexually deviant behavior.

In conclusion, I would urge legislators to take whatever steps constitutionally possible to delete one contributing factor to sexual abuse, pornography.

Respectfully,

Michael J. Scolatti Ph.D.
Licensed Clinical Psychologist

EXHIBIT NO. 5
DATE 2-9-89
BILL NO. SB 307

MISSOULA COUNTY

DANIEL L. MAGONE
SHERIFF

OFFICE OF THE SHERIFF
COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
(406) 721-5700

DOUG CHASE
UNDERSHERIFF

February 08, 1989

Mr. Bruce Crippen
Senate Judiciary Committee
Capitol Station
Helena, MT 59624

Dear Mr. Chairman:

As a law enforcement officer with Missoula County for the past 18 years, I am writing this letter to you and the committee in order to advise you that I strongly support Senate Bill 263 and Senate Bill 307 for the following reasons.

I have worked numerous sex crime cases involving young children in the Missoula County area and I can advise you that in almost 100% of the cases worked, pornography in the form of either magazines, videos or 16mm film is always associated. As the statutes now stand, children are allegedly to be protected from such trash due to constraints placed on the retailers. Law enforcement will tell you that there is certainly no constraints placed on this material once it has left the retailer and it is in the hands of perverts.

Montana does allow for misdemeanor punishment for providing children with this material; however, this seems ludicrous, due to the fact that in all cases this officer has been associated with, a felony perversion has been already committed against the children. The misdemeanor offense is overlooked or never charged in favor of the felony offense.

These sexual perverts are utilizing this pornography material to groom or seduce the young victim. In a recent case I worked, an elderly male individual invited young teenage boys into his home and would casually mention to them in a joking way, and to call their attention to them, "Do not look at those books on the floor" (pornographic magazines). Once the boys looked thru the magazines, they were then introduced to pornographic video tapes and 16 mm movies. After watching the videos and movies, the boys were talked into acts of fellatio and anal intercourse. This officer could go on with case after case; however, I feel this particular one make the point.

EXHIBIT NO. 5
DATE 2-9-89
BILL NO SB 307
etc.

Missoula County has had nude dancing for the last several years. This officer has noted an increase in the activities of prostitution around these bars that permit nude dancing. Much of this prostitution is carried on by single female individuals with no organized ties; however, this department did, within the last year, arrest a ring of organized Korean prostitutes, no more than two blocks from a bar that permits nude dancing.

A former dancer of "Pretty Girls" advised that it was her job to do a strip routine on stage while individuals in separate booths with glass fronts observe her. She advised that many male customers would masturbate while watching her and ejaculate on the glass partition that separates her from the customers. She further advised that it was the responsibility of the dancer to clean the semen off the class partition. The dancer advised that she had to do dope in order to get thru the performance. Intelligence information indicates that some of these strippers or dancers are providing customers with their telephone numbers and addresses in hopes of promoting themselves as prostitutes.

As a law enforcement officer with 18 years experience, I cannot tell you that pornography is the direct cause of perversion; however, I can say emphatically that pornography insights and excites these perverts into acts committed on these children. It is used as a tool or a basis to begin the act.

As a citizen, husband, father, and a reasonable person, I find that pornography and nude dancing are of no literary, artistic, political or scientific value. I urge the passing of Senate Bill 263 and Senate Bill 307.

Sincerely,

DANIEL L. MAGONE
SHERIFF

Capt. Larry C. Weatherman

Captain Larry C. Weatherman
Detective Division

LCW:dr

EXHIBIT NO. 7-60 P-1
DATE 2-9-89
BILL NO. SB 263, 307

MONTANA RELIGIOUS ALLIANCE FOR DECENCY
COMMUNIQUE ON PORNOGRAPHY AND OBSCENITY

As religious leaders of the state of Montana, representing a broad spectrum of the religious community, we have met on this day January 26, 1989, in Helena, Montana to discuss the problem of obscenity and pornography and to issue a statement of agreement concerning possible solutions. We understand that the meeting today is one step in an ongoing process to further seek cooperation among religious bodies on this vital topic.

1. We believe that obscenity is harmful to the men, women and children of our society. (see Attorney General's Report)

2. We believe that as religious leaders we have a responsibility to help people understand sex is a beautiful gift of God's love. Sex is part of God's design giving sanctity and dignity to human relationships.

3. We believe obscenity (hard-core) and pornography (soft-core) are harmful in that they degrade the dignity of the human being created in the image and likeness of God.

4. We believe that as religious leaders we have a responsibility to help people understand the degrading nature of pornography.

5. We believe in the passing and enforcement of strong obscenity laws as have been defined by the U.S. Supreme Court:

(1) The material describes sexual conduct in an obviously offensive way.
(2) The material goes against contemporary community standards appealing to a morbid interest in sex.
(3) The material lacks serious literary, artistic, political, or scientific value.

6. We do not advocate censorship of materials which have been clearly outlined by the Supreme Court as being under First Amendment protection.

7. We believe that laws should be passed and enforced that will place soft-core pornography out of the reach of children (commonly referred to as Harmful to Minors laws).

8. We believe that laws should be passed and enforced to stop commercial nudity and/or commercial live sex shows which we believe to be harmful to our society.

9. We encourage people as responsible American citizens to study the issue of pornography and to take the appropriate actions to maintain moral communities. (see the Attorney General's Report, p. 330)

10. We hereby subscribe to this communique as responsible individuals and religious leaders with the understanding that we do not necessarily speak for our entire constituencies.

SIGNATURE ORGANIZATION REPRESENTED

EXHIBIT NO. 4
DATE 2-9-89
SB 307 etc.

SIGNATURE	ORGANIZATION REPRESENTED
John L. Ellis	American Baptist Churches of the NorthWest, Big Sky Area
Harold S. Kellam	Faith Covenant Presbyterian Church Kalispell, MT
Steve Mathewson	Representing the Montana Regional of the Independent Fundamental Churches of America (IFLA);
David E. Archibald Roy L. Bryant	First Church of God, Anderson, Indiana Affliate
Calvin H. Morrow	District Superintendent Pentecostal Church of God,
Arnold R. Carlson, Jr. Victor J. Berg Floyd H. Oliver	Rocky Mountain District Church of the Nazarene
John L. Ortwein	Montana Catholic Conference
Paul Goodman	Montana District Council of the Assemblies of God
Tom McGillvray	Billings Home Fellowships
Carrol J. Smith	Church of Jesus Christ of Latter Day Saints
Rev. Steven C. Carlson	The Montana District of the Lutheran Church, Missouri Synod, Divide Circuit Counselor
Rev. Lyle R. Person	Evangelical Covenant Church
Marc Cramer	Helena Christian Fellowship
Donald G. Johnson	District Board Pentecostal Church of God
Michael C. McGovern	Divisional Superintendent of Rocky Mountain Foursquare Churches
Bruce A. Donnelly	Clark Fork Christian Center Great Falls Christian Center
Jerry Christison	for the churches of Christ
Leroy V. Myers	The Evangelical Church, Western Conference
Rev. Cornelius Pool	Montana Christian Reformed Churches
Michael Yakaivich	Unification Church (MT)
Lynn A. Conner	Gateway Baptist Church
Dr. Robert J. Ratner	Rabbi
Rev. Gerald Clark	Emmanuel Baptist Church Mt. Gen. Ass. of Regular Baptist Churches

SENATE JUDICIARY
EXHIBIT NO. #7
DATE 2-9-89
BILL NO. SB 307 etc

Mr. Chairman, Mr. Vice Chairman, Gentlemen.

I support good solid legislation that protects our families from the degradation that is exhibited on stages in bars and the newsstands of the local market. I support legislation that would force businesses to be held accountable for exhibiting pornographic material openly to the public especially our children.

I have been a police officer for the Billings Police Dept for about 15 years. During that time, it has come down to "you name it, I've seen it." During my tenure as a police officer, I've arrested totally nude dancers who weren't ever employed by the establishment they were in, but just "caught up" in the moment of passion, to arresting a homosexual who had just sexually assaulted an undercover officer who was trying to make cases on prostitutes. I've arrested a man for soliciting for prostitution. I've been 86'd from a local nude dancing bar because he thought I was harassing him because of arrests I had made there. Do you know what a "glory hole" is? It is a hole drilled in the wall between two porno movie arcade booths so that sexual favors can be performed anonymously. Prostitutes turn tricks in the booths along with homosexuals for free. Bathrooms in some of these establishments become miniature brothels. One of the bookstore clerks said that she had to clean the semen from the floors and walls of the booths a couple of times a day. I walked into one of the businesses on a routine business check as we are assigned to do, and observed a man masturbating in one of the booths with the door open. We have caught prostitutes turning tricks right outside the doors, in cars.

Hug and mug is a term coined in Billings to refer to the prostitutes that put one hand down the pants of the patron exiting from the adult theatre while the other hand is in his pocket. It has also been very evident that drugs flow freely from these joints because of the number of cases made in or near them. I haven't even touched on the assaults that occur. These are only a few of my observations.

I spent five years in the detective division, as a crime scene photographer and technician. I had an occasion to assist in the investigation of several homicides. There were a couple where the defendant was heavily involved in pornography. The victims had been mutilated.

Gentlemen, I could continue. I have three innocent children, ages 7, 9, and 10. I don't want them exposed to this kind of filth in any way, especially as victims of some sexual deviate. I would implore you to act in controlling these types of establishments, stores, and porno emporiums. I'm sorry that I don't have all the answers, but I've only tried to point out to you that there is a real problem that needs to be dealt with. I only ask for protection for my family and yours.

Randy Vogel
Billings Police Department

County of Yellowstone
BILLINGS, MONTANA 59101
COUNTY ATTORNEY'S OFFICE, YELLOWSTONE COUNTY COURTHOUSE, ROOM 508
(406) 256-2870

☐ Criminal Division
☐ Civil Division
☐ Deferred Prosecution
☐ Victim/Witness Assistance
☐ Child Support Enforcement

SENATE JUDICIARY
EXHIBIT NO. 8 p.1
DATE 2-9-89
BILL NO. SB 307 etc.

February 8, 1989

Tom McGillvray
2507 Wyoming Avenue
Billings, MT 59102

Re: Proposed Obsenity Legislation

Dear Tom:

As I discussed at the M.C.D.L. meeting last night, my office presented cases under the prior obsenity statute which extended to adults. Should the legislature deem it in the public interest to reinstate the law to apply to adults, this office will prosecute those cases based on proper police investigation, that we can properly bring before the court.

As I further explained, the law has rather narrow application because these matters involve traditional first amendment issues. Suffice it to say that those materials which are clearly obscure, or those who sell it for profit, make no positive contribution to the community.

Very truly yours,

Harold F. Hanser
County Attorney

HFH/cr

SENATE JUDICIARY
EXHIBIT NO. 8
DATE 2-9-89
BILL NO. SB 30, etc

CONCERNS ABOUT THE COMMERCIAL NUDITY INDUSTRY

The following concerns are established in the area of realistic attitudes that are a concern of all citizens.

--There is an historical increase in the crime rate in specific areas where sex shows are allowed to operate.

--An employment opportunity is created for the youth as they are encouraged to enter the field of sex entertainment. The creation of the market demands products which pull upon the youth from the schools. Some jobs created are much more of a risk than others, as some young girls are used as nude dancers while others may serve as secretaries. As the sex industry entices young girls the question must be asked, "Do I want my daughter or granddaughter working as a secretary in a law office or secretary or product of the sex industy".

--A tone is set for the community that sex exploitation is an appropriate, accepted enterprise by community standards.

--There is an impact on the performers themselves. The extreme risk of disfunctional damage is present. Most preformers are exposed to rape and battery.

--There is an increased burden to the tax payer due to the increased legal zoning problems, police protection and public maintenance costs. All citizens support the industry rather than the industry supporting itself.

--Property is devalued when a sex entertainment business moves into a neighborhood or area putting the individual property owners at loss without concern from the sex industry.

--In tolerating the commercial nudity business we must realize we are dealing with the mass of the sex industry itself. When any one aspect of the business expands the industry as a whole grows, and as it grows it builds a political power that determines community likes and dislikes. The power of the community standard should not be put in the hands of the sex industry.

Information gathered from
Dr. Judith Reisman

Tom McGillvray
Billings MT

EXHIBIT NO. 8,9,3
DATE 2-9-89
BILL NO. SB 307

STATE JUDICIARY
EXHIBIT NO. 4
DATE
BILL NO.

Christians' stand on porn is proper

Church's message a 2-edged sword

Guest columnist

Fred Van Dyke

The Gazette's Nov. 6 editorial described how pickets of Kwik Way stores have missed the point in their opposition to pornography. But even editors are not infallible, and there are a few points worth making that the editorial had missed.

Pornography is not a social evil that stands alone. It is an important revenue-gathering device for many racketeering and criminal organizations. That is why pornographers who operated in Fort Wayne, Ind., have seen their case tried before the U.S. Supreme Court as violation of the Racketeering Influence and Corrupt Organizations (RICO) Act, a law aimed at persons who use profits from their businesses for illegal activity. When one of this case's prosecutors, Stephen Sims, was asked some time ago why he considered pornography part of organized crime, he replied candidly, "Because it is."

Pornography not only provides income to finance other crimes, it is a crime of its own, with its own victims. Pornography creates motive, desire and economic return for sexually exploiting children. Pornography degrades women (though, in recent years, pornography for women has been doing its best to make things more equal by degrading men). But pornography is ultimately a criminal activity directed against God Himself, because it defaces the beauty of human beings made in His image. The traditional word for that kind of activity is sin, and Christians, among others, have been right to confront it.

The message of the church to the world is a sword with two edges. One proclaims the power of God's love, which is so great that even those ravaged as victims of pornography can be restored by it. The other takes its stand against evil and recognizes that what is legal is not necessarily what is right. Our country has suffered the injustices of legal slavery, legal segregation and legal discrimination. These practices were, in their time, accepted and even approved by the majority. The ends of these wrongs, in every case, began when small groups of ordinary people chose to stand against them. Today, we enjoy the benefits of their courage, and Christians played no small part in that work.

The right to read what you want is an adult privilege. The right to distribute material to the public carries a moral obligation. That is why the pickets direct their effort against distributors, not readers. For those who distribute material to the public assume a social responsibility for the effects of their products, as any good lawyer knows. That is why we prosecute drug dealers, even though their victims are willing customers, prepared to spend fortunes for what will eventually destroy their lives.

Soft or hard, pornography is pornography. The more attractively packaged and readily available, the greater the harm it will do. When a church or its members boycott the work of those who harm others, they are not, as The Gazette suggested, exercising economic blackmail. They are putting their money where their mouths are, because it takes more than a newspaper editor calling pornography "a blight upon the soul of America" to do something about it. Because the pickets really believe this sentiment which The Gazette has publicly expressed, they have taken their stand, and their target is well chosen. They are not missing the point. They are making one. It seems that the most important point of all has been missed, not by the protesters, but by the editors of this newspaper, who have confused liberty with license, and the mature exercise of freedom with the harmful abuse of its privileges.

Tom McGillivray
Billings mt

CITY OF BILLINGS
JAMES W. VAN ARSDALE
MAYOR
P.O. BOX 1178
BILLINGS, MT 59103
PHONE (406) 657-8296

SENATE JUDICIARY
EXHIBIT NO. 8, p. 4
DATE 2-9-89
BILL NO. SB 307
etc

P R O C L A M A T I O N

WHEREAS - children should be raised in a wholesome atmosphere, free from exposure to obscene material in which men and women are exploited; and

WHEREAS - pornography has a destructive influence on those it exploits and those it entices; and

WHEREAS - the citizens of the City of Billings value the qualities of modesty, purity, wholesomeness and respect; and

WHEREAS - we must stand together to encourage a more decent and enriching moral environment for our families and children.

NOW, THEREFORE, I, MAYOR JAMES W. VAN ARSDALE, MAYOR of the City of Billings, do hereby proclaim October 30 - November 6, 1988, as

PORNOGRAPHY AWARENESS WEEK

in Billings and I urge all citizens to join me in this observation.

James W Van Arsdale

JAMES W. VAN ARSDALE, MAYOR

Chester the MOLEST?

SENATE JUDICIARY
EXHIBIT NO. 8, p. 5
DATE 2-9-89
BILL NO. SB 307 etc

DWAINE TINSLEY

SENATE JUDICIARY
EXHIBIT NO. 9
DATE TUESDAY, JANUARY 2-4-89
BILL NO. S. 553

Weakness Revealed

An 'All-American Boy,' Bundy Says At The End

STARKE, Fla.

HERE IS A partial transcript of executed killer Ted Bundy's interview with religious broadcaster James Dobson of Pomona, Calif. The interview, taped Monday afternoon, was released to the press Tuesday afternoon after Bundy was put to death in Florida's electric chair.

Dobson: You are scheduled to be executed tomorrow morning at 7 o'clock if you don't receive another stay. What is going through your mind? What thoughts have you had these last few days?

Bundy: I won't kid you to say that it's something I feel I have control of, or something I have come to terms with, because I haven't. It's a moment-to-moment thing. Sometimes I feel very tranquil and other times I don't feel tranquil at all.

Dobson: For the record, you are guilty of killing many women and girls. Is that correct?

Bundy: Yes, that's correct.

Dobson: Ted, how did it happen? Take me back. What are the antecedents of the behavior that we've seen? So much grief, so much sorrow, so much pain for so many people. Where did it start, how did this moment come about?

Bundy: That's the question of the hour and one that not only people much more intelligent than I will be working on for years but one that I've been working on for years and trying to understand. Is there enough time to explain it all? I don't know. I think I understand it, though, what happened to me to the extent that I can see how certain feelings and ideas have developed in me, to the point that I began to act out certain very violent and very destructive feelings.

Dobson: Let's go back then to those roots. First of all, as I understand it, you were raised in what you considered to have been a healthy home. You were not physically abused, you were not sexually abused, you were not emotionally abused.

Bundy: No. No. And that's part of [illegible] to me at least happen overnight. My experience with pornography [illegible] literally, but with pornography that deals on a violent level with sexuality it's here you become addicted to it — and I look at this as a kind of addiction like other kinds of addictions — I would keep looking for more potent, more explicit, more graphic kinds of material.

Dobson: How long did you stay at that point before you actually assaulted someone?

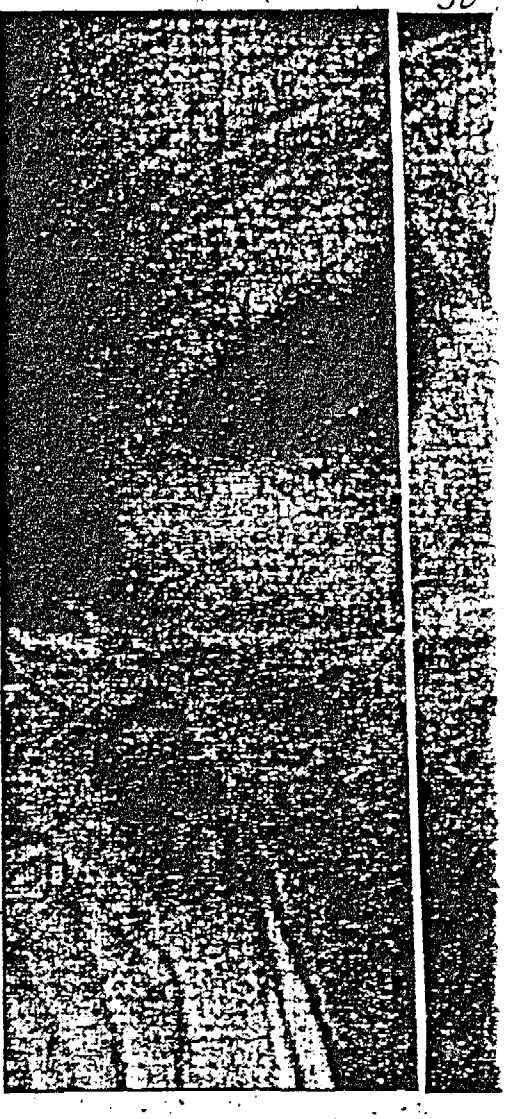
Bundy: Well, yeah. That is a very delicate point, by the way, in my own development. We're talking about something ... about having reached the point or gray area that, that surrounded that point over a course of years.

I would say a couple of years. What I was dealing with there was very strong inhibitions against criminal behavior or violent behavior that had been conditioned into me, bred into me in my environment, in my neighborhood, in my church, in my school. Things that said, 'No, this is wrong. Even to think of it is wrong, but certainly to do it is wrong.' I'm on that edge, I would say the last vestiges of restraint, the barriers to actually doing something are being tested constantly, assailed through the kind of fantasy life that was fueled largely by pornography.

Dobson: Do you remember what pushed you over that edge? Do you remember the decision to go for it? Do you remember (when) you decided to throw caution to the wind?

Bundy: When you say pushed, I know what you're saying. I don't want to infer again that I was some helpless kind of victim in that we're talking about an influence that is an influence of violent types of media, violent types of pornography which had an indispensible in the chain ... of events that led to the behavior ... the assaults, the murders.

It's a very difficult thing to describe, the sensation of reaching that point where I knew that, that something had say snapped, that I knew that I couldn't control any more, that the barriers I had [illegible] learned as a



Ted Bundy contemplating a question i
interview with James Dobson, a relig

at the All-American boy. I wasn't perfect, ... but I was OK. I was. The basic humanity and the basic spirit that God gave me was intact, but unfortunately became overwhelmed at times.

And people need to recognize it's not some kind of ... those of us who are or who have been so much influenced by violence in the media, in particular pornographic violence, are not some kind of inhereat monsters.

We are your sons and we are your husbands and we grew up in regular families. And pornography can reach out and snatch a kid out of any house today. If snatched me out of my home 20, 30 years ago and as dedicated as my parents were, and they were diligent in protecting their children and as good a Christian home as we had, and we had a wonderful, [illegible] there is no protection against the kind of influences that are [illegible] that tolerates

Dobson: You feel [illegible] really deeply, don't you — really

DATE 2-9-89

Montana Catholic Conference

SB307 etc

SENATE JUDICIARY
EXHIBIT NO. 1C
DATE
BILL NO.

February 9, 1989

CHAIRMAN CRIPPEN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE

I am John Ortwein, representing the Montana Catholic Conference.

The current widespread availability of blatantly offensive pornographic materials confronts our society with many problems.

Pornography is loveless and glorifies sex for its own sake. It fosters an erosion of reverence for life and love and reduces sexual intimacy to an exercise of self-gratification, power, or pleasure and pain. It is therefore, an attack on every person's human dignity. It is an evil that desensitizes and degrades all who use it, insults and victimizes all women, promotes sexual violence, and violates the minds and bodies of innocent children.

The past decade has been a period of explosive growth for the pornography industry. Because of this unrestricted growth, it has spread from the larger cities into suburban areas and smaller towns. It has undermined our traditional family values and made a mockery of the sanctity of marriage.

The Montana Catholic Conference supports Senate bills 263, 307, and 342 because the consistent Catholic tradition considers sexuality as a gift from God and because of our insistence on the intrinsic dignity of every person. We urge your support on these three bills.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

PETER "PETE" BRUNO, M.Ed., L.P.C.
Sexual Assault Treatment Program, Director

SENATE JUDICIARY
EXHIBIT NO. #11
DATE 2-9-89
BILL NO. SB 307 etc

GRADUATE EDUCATION

Bachelor of Arts in Psychology, Brown University

Master of Education in Counseling, Montana State University

CERTIFICATION AND LICENSURE

Department of Institutions and Department of Social and Rehabilitation Services:
Mental Health Professional Person #239

Montana State: Licensed Professional Counselor #102

POST-GRADUATE EDUCATION

1980 National Seminar - Advanced Interpretation of the MMPI.
Dr. Ziskin - Seminar on MMPI for Court Cases.

1981 Northwest Treatment Associates Workshop - Evaluation and Treatment of Sex Offenders.

1983 National Seminar - Advanced Interpretation of the MMPI.

1984 Northwest Treatment Associates Workshop - Evaluation and Treatment of Sex Offenders.
Irwin Dreiblatt's Workshop - Dynamics and In-Community Treatment of Offenders.
Harborview Hospital Sexual Assault Center Course - Child Sexual Assault.

1985 Judith Becker/Michael O'Brien Workshop - Evaluation and Treatment of Adolescent Sex Offenders.

1986 Menninger Foundation's Villages Program - Dynamics of Child Sexual Abuse.
Nicholas Groth's Forensic Mental Health Associates Workshop - The Treatment of Sexual Assault Offenders and Victims.

1987 Eugene Porter's Workshop - Victim to Victimizer.
Eastern Montana College - Sexual Assault of Children and Adolescents.
Montana Department of Justice - Interdisciplinary Conference on Child Sexual Abuse.

1988 x3

EXPERIENCE

14 ~~Thirteen~~ Clinical Years

8 ~~Seven~~ Years of Specialization in Sex Offender Evaluation and Treatment

INVITED PROFESSIONAL PRESENTATIONS

Advanced MMPI Interpretation Strategies

Typologies and Family Dynamics of Adult and Adolescent Sex Offenders

AWARDS AND RECOGNITION OF ACHIEVEMENT

Montana Mental Health Association, Montana Council of CMHC Boards, and Montana Department of Institutions - 1981 Outstanding Direct Service Provider

Montanans for Children, Youth and Families, Inc. President - 1979 to Present

1989 Secretary - Montana Sex Offender Treatment Assn.

1/1/88

SENATE JUDICIARY
EXHIBIT NO. 11 P.2
DATE 2-9-89
BILL NO. SB 307 etc

February 7, 1989

STATE JUDICIARY COMMITTEE
MONTANA STATE CAPITOL
HELENA, MONTANA 59601

Dear Senators;

I am a detective for the Lincoln County Sheriff's Department. As a detective, I have been dealing with sexual assault and abuse cases since 1980.

In 1988 it was reported that Lincoln County was number three (#3) in total number of reported sexual crimes for the state. Per capita, that made us #1.

I can personally tell you that in almost every case where I have entered the suspect's residence, pornography was around in one form or another.

In speaking with Joanne Serna, of our Mental Health Office, she related to me that the majority of her juvenile victims have told her that the suspect in their individual case was using pornography.

I had the opportunity to attend an FBI sex crimes profiling class in November of 1987. They showed several cases on sex crimes, and all involved pornography in some way. They are convinced, and assured us that porn is involved with these sex crimes.

After seeing these victims and suspects, along with porn year after year, I can assure you there is a direct connection. People read the stories, or see the porn movies, and believe what they see and read. Their one purpose in life will be to fulfill the fantasy that they have received from this material. I have seen this happen in Libby.

I have heard people say, "We are giving up our rights if we vote in an anti-pornography law". But, I ask you, wouldn't you give up your right to buy porn if it could possibly save one child from being a victim, or one more person from becoming a suspect?

I have also had people ask me, "Why do you want another law to enforce when you can't stop the problem?" Well, they may be right. The law may not stop porn worldwide, but it will help in the State of Montana. We have many laws; laws against theft, murder, and drugs. We will probably never stop these crimes, including drugs, but by making drugs illegal we can keep it out of some of our kids' hands. If we can do this then the law is worth the trouble. This includes the pornography laws.

SENATE JUDICIARY
EXHIBIT NO. 11 p. 3
DATE 2-9-89
BILL NO. SB 307 etc.

February 7, 1989

There is a lot I could write about sex crimes and pornography, but I know you are busy. I wish I could have testified in person but could not make it due to commitments in court. I would like to help you to see, feel and understand about the victims we deal with. It is hard to understand unless you see it first-hand. But believe me when I say pornography is connected to these sex crimes, and I believe it is the fuel that feeds the fire.

I urge you to vote for and support the anti-porn laws.

Sincerely,

Don Bernall

Lt. Donald H. Bernall
Lincoln County Sheriff's Department

SENATE JUDICIARY
EXHIBIT NO. 11, 2-4
DATE 2-9-89
BILL NO. SB 304 etc

February 7, 1989

STATE JUDICIARY COMMITTEE
MONTANA STATE CAPITOL
HELENA, MONTANA 59601

Dear Senators;

I would like to talk to you about the Nude Dancing Law, which is before you.

In 1987 a group of nude dancers came to Libby, Montana, from out of state. I was asked to check on the situation to make sure it complied with city, county, and state laws.

After arriving, I found that our laws are so vague there was nothing I could do. While there, I observed three individuals I had previously dealt with on sexual crime investigations. This nude dance was being held in a bar, where everyone I saw was consuming alcohol. As I left that night, I fully expected to be called back to work on another sexual assault. I felt they were turning 150 to 200 sexually aroused men whose judgement was impaired by alcohol loose in our community.

I feel we have enough problems with sexual abuse and assaults, without arousing these people with nude dancers and alcohol. I believe anyone can see how someone who is already disposed towards a sexual crime can be excited to the point of fulfilling that crime by this type of activity.

Sincerely,

Don Bernall

Lt. Donald H. Bernall
Lincoln County Sheriff's Department

SENATE JUDICIARY
EXHIBIT NO. 11,0.5
DATE 2-9-89
BILL NO. SB 307 etc

U.S. Department of Justice

United States Attorney
District of Montana

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

Post Office Box 1478
Billings, Montana 59103

406/657-6101
FTS/585-6101

October 7, 1987

Mrs. Larry Anderson
172 Pioneer Road
Libby, Montana 59923

Dear Mrs. Anderson:

Reference your excellent letter dated October 5, 1987, regarding pornography and its relationship to sexual abuse.

The best suggestion that I can make is contact and lobbying with the Montana legislative body to enact strong and legal anti-obscenity statutes. The best example of this is House Bill 1171, enacted in the State of North Carolina with an effective date of July 11, 1985. I have enclosed an article which describes some of the lobbying efforts in getting that legislation enacted.

Another suggestion I can make is to become active in those organizations opposed to obscenity. I would particularly recommend Citizens for Decency Through Law, Inc., 2331 West Royal Palm Road, Suite 105, Phoenix, Arizona, 85021, telephone number 602-995-2600.

Sincerely,

PETE DUNBAR
United States Attorney

PD:mah
Enc.

Terry Crooks

EXHIBIT NO. 11, P. 6
DATE 2-9-89

Montana Citizens for Decency Through Law, Inc.

P.O. Box 1202 • Libby, Montana 59923 • (406)293-5426

SB 307 etc

February 9, 1989

RE: S.B. 307
S.B. 342
S.B. 263

Senate Judiciary Committee,

Because of the values upon which this nation was founded, there is a need for the bills under consideration. In this nation the laws exist for the good of all the people rather than people existing for the good of some legal principle at the expense of the people. Our forefathers did not die at Valley Forge to give someone the right to sell and exploit people sexually for financial gain and then hide behind a false claim that this is what freedom in America is all about.

S.B. 307 is patterned after similar laws now on the books in progressive states, counties and cities since 1973. According to the U. S. Attorney General's Report on Pornography these laws have not been a threat to a serious publication in any library. In putting together that report, they heard many cries of inflammatory rhetoric and accusations of censorship, but finally evaluated those who issued such cries as people with "phantom fears". (page 22) This law strikes at organized crime, which produces 90% of this material, and at those of similar thirst for money who recruit and exploit young people to be their victims for prostitution and drug abuse in order to make such material. A long chain of abuse and victims follows, which includes the rapist who believes the "Rape Myth" that women really want to be raped, as well as the woman or child who becomes the target of sexual abuse to fulfill the empty bottomless fantasy of pornography. (pgs.291,284)

S.B. 342 will put soft-core pornography behind the counter out of reach of minors. This would be a logical move in the mind of anyone concerned about children picking up magazines off the racks and getting an eye-full of sexual education from Playboy's, Penthouse's or Hustler's pro-homosexual, pro-A.I.D.S. life style. Every community has stories of young boys standing in front of easily accessible pornography racks fondling themselves. By law these magazines cannot be prohibited from sale, but citizens have the right to restrict the location of their sale so that children cannot pull them from the racks.

S.B. 263 will restrict nude dancing and stripping in establishments which sell alcohol. Such activity sets a negative community standard and recruits its strippers from among our children and the children of our neighbors. It is common knowledge that prostitution is a large part of that business as a natural by-product of situations where people are involved with the lowered inhibitions of intoxication and sexual arousal.

SENATE JUDICIARY
EXHIBIT NO. 11, 9-7
DATE 2-9-89
BILL NO. SB 307 etc.

I encourage you to make your evaluations with an intellectual study of the U.S. Attorney General's Report. Consider Dr. Dietz's comments in that report as he argued for pornography at the start of the hearing and then reversed his position 180 degrees by its conclusion. Listen to the cries of the victims and the cries of those who cannot cry any longer. The decision handed down by you and your influence in this matter will be a determining factor in the lives of many young people and families of our state in the years to come.

Thank you for your service,

Terry Crooks

Terry Crooks, Vice-President of Montana Citizens for Decency through Law
662 Cherry Creek Rd.
Libby Mt. 59923
(406) 293-6629

Bruce Crippen
Senate judiciary Committee

SENATE JUDICIARY
EXHIBIT NO. 11, P. 8
DATE 2-9-89
BILL NO. SB 304 et al

Two years ago I learned that my two youn boys had been sexually molested and subjected to pornographic material.

For quite sometime I felt that somthing was very wrong with my kids but I couldn't find out what it was. On January 21st, 1987 I found out that the young man up the street from us and who babysat occasionally was using them sexually. He was a brother to two of their playmates.

I learned of this molestation inadvertently from my youngest son. He had drawn a dirty picture and put it in the head of his boy scout survival knife. He couldn't get the top off and had brought it to me to unscrew. When I had loosened it and was going to take it off he started screaming and crying, grabbed the knife and took something out of it and threw it in the garbage. Of course I retrieved it and when I saw it and started to question him it all came out. He was taking turns using them after they had gone to bed. I took them to the Dr. and had them examined. They were tested for V.D. and the oldest boy had contracted gonnareha from him. They were both given a very painful shot, and it took them almost an hour before they could even walk.

I asked my youngest boy where he had seen pictures of that nature that he could draw something like that and he said that the young man in question had shown them dirty books and done things to them.

We contacted the police and the man was arrested, held in jail for about two weeks and released. His trial was delayed and postponed for a year and then dismissed on lack of evidence.

I just can't stress strongly enough the need to pass strong and enforcable laws against pornography. To ban and eliminate a very definite link between sexual crimes and the influnce of pornographic material.

I might add that the young man that molested my boys went on to molest a 4 year old boy while he was waiting to go to trial for mine. That went on after his case was dismissed and he was caught again, jailed, tried and sentenced to 10 years in jail. Five of which was suspended.

Marlene Kinnaird Elliott

Cpt 11, p. 10
2/9/89
SB 307, 263, 342

Volume 21
Numbers 1 & 2
Fall 1987 and Winter 1988

UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM

SYMPOSIUM: PORNOGRAPHY

Introduction
Lillian R. BeVier

ARTICLES

Pornography and Obscenity Sold in "Adult Bookstores": A Survey of 5132 Books, Magazines, and Films in Four American Cities
Park Elliot Dietz and Alan E. Sears

Methodological Issues in the Content Analysis of Pornography
Daniel Linz and Edward Donnerstein

Pornography is a Civil Rights Issue for Women
Andrea Dworkin

Brief Amici Curiae of Feminist Anti-Censorship Taskforce, et al., in *American Booksellers Association v. Hudnut*
Nan D. Hunter and Sylvia A. Law

The Right to Speak, the Right to Hear, and the Right Not to Hear: The Technological Resolution to the Cable/Pornography Debate
Michael I. Meyerson

Prurient Interest and Human Dignity: Pornography Regulation in West Germany and the United States
Mathias Reimann

Hard-Core Pornography: A Proposal for a Per Se Rule
Bruce A. Taylor

NOTES

Improving Handicappers' Civil Rights in Michigan—Preventing Discrimination Through Accommodation

Rape Shield Laws—Is It Time for Reinforcement?

see esp. 38-41

EXHIBIT NUMBER 12
2-9-89
SB 307 etc

TO: Senate Judiciary Committee

FROM: Carl A. Hatch
97 Meadow Drive
Helena, MT 59601
telephone: 442-7830 (office)
442-2353 (home)

DATE: February 9, 1989

RE: Senate Bills 307, 342, 263

Honorable Senators:

I urge passage of Senate Bills 307, 342 and 263 into law. As the parent of five daughters and a son, ages 19 to 10, I am concerned with what I see as an increasing exposure to pornographic violence. Obscene material, productions, and films are flooding society, and we are drowning in a sea of filth. These bills will help to stem the flood. "Smut peddling" has become big business in this country. The harmful and addictive nature of pornography is documented.

In Montana we have become leaders in protecting the environment, our air, water and resources, from exploitation and pollution; we see the value to life and limb to require occupants of motor vehicles to wear seat belts. Surely we can lead in protecting our citizens from patently offensive depictions or descriptions of sexual conduct and abuse.

These bills do not limit or prohibit legitimate free speech or expression. They state in no uncertain terms what we in Montana consider as obscene and what kind of society we are.

Carl A. Hatch

Ex. 12, p. 2
2/9/89

NATION

Psychologists discount post-abortion tr

WASHINGTON (AP) — The American Psychological Association says a survey of the scientific research on abortion suggests that most women suffer no lasting emotional problems from the procedure.

"By and large, what you find is that most of the women who have abortions experience a sense of relief," Brian Wilcox, director of public interest legislation at the APA, said in an interview on Tuesday.

The APA survey found that much research on the subject has been flawed, but it also found the notion of a post-abortion syndrome is not a "scientifically or medically recognized" disorder.

Earlier this month, U.S. Surgeon General C. Everett Koop said in a letter to the White House that there was no scientifically sound evidence showing negative health effects to the 1.5 million women who get abortions annually.

Groups opposed to abortion have promoted the idea of a "post-abortion trauma," typically by offering anecdotal evidence about individual cases.

Olivia Gans, director of a group called American Victims of Abortion, said negative findings on the effects of abortion are absent from scientific literature because the APA and the American Medical Association have a pro-abortion "bias."

But she agreed with both Wilcox and Koop that more research on the subject is needed.

Wilcox said APA experts surveyed more than 100 studies on the psychological effects of abortion and found that most were flawed scientifically because they failed to make valid comparisons. For example, Wilcox said, no studies have directly compared the relative effects on women who choose abortion with those who decide to bear an unwanted child for adoption, or raise a child out of wedlock.

In general, however, the studies do not show any lasting psychological trauma that can be attributed to abortion, he said.

"It's clear that the vast majority of women are ... not going to experience any significant problems," said Wilcox. "Millions of women are having abortions and it appears to be a relatively benign procedure both medically and psychologically. It just depends on the circumstances surrounding the abortion."

Wilcox said there is "the occasional woman" who has difficulty adjusting emotionally after an abortion, "but that depends on whether she has had psychological p... the abortion ... abortion."

"If a wom... didn't want ... he said. "B... chosen by ..."

Miss Gan... women exp... tion.

"Post-ab... been discus... among tho... said.

Professi... on the synd... getting put...

Bundy: TV sex violence dangerous

His craving for porno grew into bloodlust

STARKE, Fla. (AP) — Hours before his execution, Ted Bundy coolly traced his origins as a serial killer, describing how boyhood glimpses of violent pornography became an addiction that grew until his "destructive energy" exploded from fantasy into reality.

The 42-year-old law school dropout, whose bizarre mixture of intelligence, charm and homicidal bloodlust were the subject of five books and a TV movie, also warned before his execution Tuesday that there were others like himself.

"There are loose in the towns and their communities people like me today whose dangerous impulses are being fueled day in, day out, by violence in the media ... particularly sexual violence," Bundy said in a videotaped interview Monday.

Bundy, who after a decade of denial told detectives from four states that he had murdered 23 young women since the mid-1970s, said he deserved his punishment.

"I don't want to die, I'm not going to kid you. ...(but) I deserve, certainly the most extreme punishment society has. I think society deserves to be protected from me and from others like me," Bundy said in the interview with James Dobson, a religious broadcaster and psychologist.

He said between sobs he hoped the interview would spur society to protect itself from the widespread influence of pornography, TV violence, and X-rated movies.

Although he said he felt remorse for the sex-related murders, which authorities believes could total 36 nationwide, Bundy said, "There is no way in the world that killing me is going to restore those beautiful children to their parents."

Dobson, who has a daily program heard on 1,200 radio stations, asked about the rape and murder of 12-year-old Kimberly Leach, for which Bundy was executed. "What did you feel after that?"

Bundy responded: "I can't talk about that right now. ... It's too painful .... I can't begin to understand the pain that the parents of these children (felt). "I don't ask them to forgive me. I'm not asking for it. That kind of forgiveness is of God."

Prodded by Dobson to explore the sources of his violence, Bundy said that during his murder rampages "the unique thing about how this worked ... is I still felt in my regular life the full range of guilt and remorse about other things."

But the murders, he said, were "compartmentalized" in his brain, a "very well focused, very sharply focused area that was a black hole that was like a crack and everything that fell into that crack hole just disappeared."

Claiming he was "essentially a normal person" who grew up in a good home, Bundy said:

"People need to recognize ... those of us who are or who have been so much influenced by violence in the media, in particular pornographic violence, are not some kind of inherent monsters. We are your sons and we are your husbands and we grew up in regular families. And pornography can reach out and snatch a kid out of any house today."

Bundy during the interview with Dr. James Dobson the night before the serial killer was executed.

Bundy is hung in effigy by Reagan impersonator Jerry Jackson in Atlanta, Ga., during a pro-death penalty celebration.

Bundy's youth strange

SEATTLE (AP) — A psychiatrist who examined Ted Bundy as part of a last-ditch attempt to save him from execution concluded that the confessed serial killer probably started developing psychological problems as an infant.

Dr. Dorothy Otnow Lewis, of New Haven, Conn., said Bundy first lived in the home of his maternal grandparents in Philadelphia, with a grandfather who was "an extremely violent and frightening individual."

The grandfather would kick dogs, swing cats by their tails, beat people who angered him and read pornography voraciously, she said.

LEGALS

CITY OF HELENA
NOTICE TO BIDDERS

The City of Helena will receive sealed bids for the purchase of One (1) New ... Ton ... Street Sweeper or Bids will be opened at 10:00 a.m. Local Time on February 8, 1989, in the office of the City Clerk, City of Helena, 316 North Park Avenue.

Anyone wishing to submit bids may obtain detailed specifications from the City Clerk or the Public Works Director at 316 North Park Avenue, Helena, MT 59623.

The City of Helena reserves the right to reject any or all bids, to waive informalities in the bidding process, or to accept any bid deemed to be in the best interests of the City of Helena.

CITY OF HELENA
MONTANA
/s/ William J. Verwolf
City Manager
January 18, 25, 1989

ORDER SETTING TIME AND PLACE OF HEARING PETITION FOR CHANGE OF NAME
MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY
Cause No. BDV-89-51
IN RE THE MATTER OF THE CHANGE OF NAME OF
TAILOR J. AHO

Tana S. Nelson has petitioned the Court for an order changing the name of her natural child from Tailor J. Aho to Tailor J. Nelson Thereafter.

IT IS HEREBY ORDERED that the petition of Tana S. Nelson to change the name of her natural child from Tailor J. Aho to Tailor J. Nelson shall be heard at the Lewis and Clark County Courthouse Helena, Montana on the 23rd day of February, 1989, at 9:00 o'clock a.m., which time objections to said petition will be heard, if any. Any objections shall be filed with the Clerk of this Court by any person who can, in such objections, show to the Court reasons against such change of name.

Dated this the 13 day of January, 1989.

CLARA GILREATH,
Clerk of Court
BY JUDY HARRIS
Deputy Clerk
(SEAL)

Mark B. Vashe
Attorney at Law
New York Block
44 N. Main St.
Suite 2E
P.O. ABox 412
Helena, MT 59624
(406) 449-7329
Attorney for Petitioner
Tana S. Nelson
January 18, 25 February 1, 8, 1989

Yahoo
INDEPEND...
Mail or bring in the e... hand-drawn facsimile... no age limit, no purc...

BRIEFS

Chem weapons prompt response

WASHINGTON (AP) — The Democratic chairman of the Senate Foreign Relations Committee and a conservative Republican member are drafting ...

Woman bishop's approval not unanimous

BOSTON (AP) — The election of the first woman bishop of the Episcopal Church has been approved despite adamant objections, but church officials don't expect a schism.

Tuesday's mail brought the 60th ballot required to give the Rev. Barbara C. Harris approval from a majority of the nation's 118 Episcopal bishops.

When she is consecrated Feb. 11 in Boston, Harris will become the first woman bishop elected by a 2.5 million-member church that believes its ... direct successors of Christ's apostles ...

But critics have said the 58-year-old Harris is too liberal politically, and has no degree from a college or seminary. Some are concerned by her divorce, while conservatives have opposed her election simply because she is female.

The Rev. Andrew Mead, rector of the Church of the Advent in Boston, said he would neither recognize the consecration nor allow Harris to conduct religious services in his parish.

"I'd invite her for tea," Mead said, adding that ...

Office of the County Attorney
Flathead County

TED O. LYMPUS, County Attorney
JONATHAN B. SMITH, Chief Deputy
DENNIS J. HESTER, Deputy
RANDY K. SCHWICKERT, Deputy
THOMAS J. ESCH, Deputy
EDWARD CORRIGAN, Deputy

Kalispell, Montana 59903-1516

P.O.Box 1516
Second Floor
Justice Center
(406)752-5300 - Ext. 241
or (406)756-5618

SENATE JUDICIARY
EXHIBIT #13
DATE 2-9-89
SB 307

February 6, 1989

TO WHOM IT MAY CONCERN:

This letter is written in support of proposed legislation which would more stringently restrict both the public dissemination of pornographic materials and live public nude performances than is the case under present law.

In my upwards of fourteen years as a prosecutor, I have observed that in the great majority of crimes involving sexual violence and child molestation (both male and female), the offender was influenced by his exposure to pornographic materials. In addition to my observations, I can safely say that those of others in the law enforcment community have been similar. Finally, I would ask that you recall Ted Bundy's pre-execution declaration concerning the impact of his exposure to pornography upon him and its influence upon his spree of violence.

In conclusion, I earnestly urge favorable consideration of this proposed legislation. In my opinion, pornography is not constitutionally protected expression by any rational interpretation of constitutional law.

Thank you for your consideration.

Ted O. Lympus
Flathead County Attorney

EXHIBIT NO. 15
DATE 2-9-89
BILL NO. SB307 etc

~~We~~ the undersigned, being residents of the State of Montana, would let it be known that we believe that pornography is linked with child abuse, as well as assaults upon women; and men. Because of this we are urging our state Senators and Representatives to vote for strong legislation in the following areas:

1. for a Hard-Core Pornography Law (Obscenity).
2. for a Harmful to Minors Law (restricting access of soft-core pornography to minors in commercial establishments).
3. for a Commercial Nudity Law (prohibiting commercial nude dancing.

	NAME	ADDRESS
1.	Tim Bolton	601 W. River Rd. D.L.
2.	Judy E. Bolton	601 W. River Rd. D.L.
3.	Tim D. Bolton	601 W. River Rd. D.L.
4.	Dan [illegible]	105 CLAGGETT; D.L.
5.	Wade Skaggs	15 CLAGGETT; D.L.
6.	Debbie L Howeth	712 St Marys Dr Lodge
7.	Dave Howeth	712 St. Marys Deer Lodge MT
8.	Karen L. Knapp	609 Montana Ave Deer Lodge MT.
9.	Velma J Taylor	707 Kentucky Deer Lodge MT.
10.	Wes Taylor	707 Kentucky Deer lodge MT
11.	Marian Struble	708 Washington Deer lodge
12.	Edwin Struble	708 WASHINGTON Deer Lodge
13.	Kim Knapp	607 Oregon Deer Lodge
14.	Lonnie L Knapp	607 Oregon Deerlodge
15.	[illegible]	603 Oregon Deerlodge
16.	Tammie L Hoffsinger	603 Oregon " "
17.	Anita B Wood	801 W. St. Marys Deer Lodge
18.	Kristin K. Crossler	206 Dixon Deer Lodge
19.	Maynard Wood	702 Missouri Deer lodge
20.	Geraldine Wessner	702 5th St. Deer Lodge
21.	Clara Morris	111 E. Placett Dr. Lodge
22.	Deborah A Cope	811 Kentucky Deer Lodge

N. Carolina - Scott #15

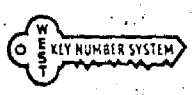
SENATE JUDICIARY
EXHIBIT NO. 16 pg 1
DATE 2-9-89
BILL NO. SB 307
263
342

It was not necessary that plaintiff present evidence as to the exact temperature inside the radiation suit in order to show an increased risk of overheating. *Cf. McCuiston v. Addressograph-Multigraph Corp.*, 308 N.C. 665, 303 S.E.2d 795 (1983) (claimant need not measure noise level to support claim for hearing loss); *Gay v. J.P. Stevens & Co.*, 79 N.C.App. 324, 339 S.E.2d 490 (1986) (claimant need not measure concentrations of dust and toxins to support claim for occupational disease due to dust and fume inhalation); *Lake v. Midwest Packing Company*, 301 S.W.2d 834 (Mo. 1957) (claimants need not establish exact temperature in workplace to support heatstroke claim). Evidence that the room temperature was 85 degrees and that plaintiff suffered heat exhaustion while wearing a radiation suit which inhibited his body's ability to radiate heat is sufficient.

We are not persuaded by the Court of Appeals' attempt to distinguish *Fields*. The Court of Appeals places great reliance upon the fact that the claimant in *Fields* labored an entire day in temperatures measuring as high as 104 degrees. A thermometer reading alone is not dispositive in cases of heat-related illness. It is the province of the medical experts, not the appellate courts, to determine whether a room temperature of 85 degrees may be a factor in causing heat exhaustion when all circumstances, including the type of clothing worn, are considered. *Cf. T.J. Moss Tie Co. v. Rollins*, 191 Tenn. 577, 235 S.W.2d 585 (1951) (claimant suffered heat prostration when temperature 85 or 86 degrees; death compensable under test similar to that in *Fields*).

We therefore reverse the Court of Appeals and remand to that court for further remand to the Industrial Commission for reconsideration on the present record in a manner consistent with this opinion.

REVERSED AND REMANDED.



320 N.C. 485

CINEMA I VIDEO, INC. d/b/a Cinema I Video et al.,

v.

Lacy H. THORNBURG, Attorney General of the State of North Carolina, et al.,

NORTH AMERICAN VIDEO, LTD. OF DURHAM, d/b/a North American Video, et al.,

v.

Lacy H. THORNBURG, Attorney General of the State of North Carolina, et al.,

NORTH CAROLINA ASSOCIATION OF FAMILY ENTERTAINMENT CENTER, INC.

v.

Lacy H. THORNBURG.

PARKER NEWS, INC., a North Carolina Corporation, et al.,

v.

Lacy H. THORNBURG, Attorney General of the State of North Carolina, et al.

No. 49A87.

Supreme Court of North Carolina.

July 28, 1987.

Action was brought for declaratory judgment that obscenity laws were unconstitutional. The Superior Court, Wake County, Bailey, J., denied relief and plaintiffs appealed. The Court of Appeals, 83 N.C.App. 544, 351 S.E.2d 305, affirmed. The Supreme Court, Whichard, J., held that North Carolina obscenity laws are not unconstitutional as drawn.

Affirmed.

Obscenity ⇐2.5

Act adopted in 1985 to strengthen obscenity laws, protect minors from harmful material that does not rise to the level of

obscenity, and to stop the sexual exploitation and prostitution of minors is not unconstitutional as drawn. G.S. §§ 14-190.1, 14-190.13, 14-190.16, 14-190.17; U.S.C.A. Const.Amends. 1, 5, 8, 9, 14; Const. Art. 1, § 27.

On plaintiff's appeal as a matter of right pursuant to N.C.G.S. 7A-30(1) and (2) of a decision of a divided panel of the Court of Appeals, 83 N.C.App. 544, 351 S.E.2d 305 (1986), affirming a "Judgment and Order" entered by Bailey, J., at the 3 January 1986 Regular Civil Session of Superior Court, Wake County. Heard in the Supreme Court 9 June 1987.

Kirby, Wallace, Creech, Sarda, Zaytoun & Cashwell by David F. Kirby and Robert E. Zaytoun, Raleigh, for plaintiff-appellants Cinema I Video, Inc., et al., North American Video, Ltd., et al. and North Carolina Association of Family Entertainment Centers, Inc.

Whitley, Coley and Wooten by Everette L. Wooten, Jr., Kinston, for plaintiffs-appellants Parker News, Inc., et al.

Lacy H. Thornburg, Atty. Gen. by Andrew A. Vanore, Jr., Chief Deputy Atty. Gen., Edwin M. Speas, Jr., Sp. Deputy Atty. Gen., and Thomas J. Ziko, Asst. Atty. Gen., Raleigh, for defendants-appellees.

North Carolina Civil Liberties Union Legal Foundation by William G. Simpson, Jr., Greensboro, and M. Jackson Nichols, Raleigh, amicus curiae.

North Carolina Academy of Trial Lawyers, PHE, Inc., and Philip Harvey, Washington, D.C., by David S. Rudolf, Chapel Hill, and Bruce J. Ennis, Washington, D.C., amici curiae.

WHICHARD, Justice.

Plaintiffs brought this declaratory judgment action seeking to have amendments to North Carolina's obscenity laws declared facially unconstitutional and further seeking to enjoin defendants from enforcing the statutes against them. These amendments were enacted on 11 July 1985 as House Bill 1171, entitled "AN ACT TO STRENGTHEN THE OBSCENITY LAWS, TO PROTECT MINORS FROM HARMFUL MATERIAL THAT DOES NOT RISE TO THE LEVEL OF OBSCENITY, AND TO STOP THE SEXUAL EXPLOITATION AND PROSTITUTION OF MINORS." This bill amended N.C.G.S. 14-190.1, repealed N.C.G.S. 14-190.2, and added N.C.G.S. 14-190.13, -190.16, and -190.17. These provisions became effective 1 October 1985.

On 30 September 1985 plaintiffs in case 85CVS6750 (Cinema I Video) filed a complaint and motions for injunctive relief from the enforcement of the statutes, naming as defendants North Carolina's Attorney General and the district attorneys for each judicial district of the state. Plaintiffs alleged that because they "are in the business of selling and renting video tapes, including tapes which are sexually explicit, they will be the target of defendants' intended enforcement of N.C.G.S. secs. 14-190.1, 14-190.13, 14-190.16, and 14-190.17." They claimed that these statutes abridge their rights and the rights of their customers under the first, fifth, eighth, ninth, and fourteenth amendments to the United States Constitution and article I, sec. 27 of the Constitution of North Carolina. Plaintiffs further alleged that the amended statutes are vague in their terms and substantially overbroad. Plaintiffs have averred, as irreparable injury, the prospect of severe financial loss or ruin and possible criminal prosecution pending a determination of the case on its merits.

On 2 October 1985 plaintiffs in case 85CVS1796 (Parker News) filed a similar complaint in superior court, Wayne County. Plaintiffs in case 85CVS6850 (North American Video) filed a complaint in superior court, Wake County, on 3 October 1985, and plaintiffs in case 85CVS8071 (North Carolina Family Entertainment Center, Inc.) filed their complaint in superior court, Wake County on 15 November 1985. These cases also challenged the constitutionality of the statutes cited above.

In an order filed 3 October 1985 the temporary restraining orders prayed for in cases 85CVS6750 and 85CVS6850 were issued, pending a hearing on plaintiff's motions for preliminary injunctions. The motions for preliminary injunctions were denied, however, on 4 October 1985. Plaintiffs then sought appellate review of the denial of their motions for preliminary injunctions by filing petitions for a writ of certiorari, a writ of supersedeas, and a temporary stay with the Court of Appeals. These petitions were denied, and the actions proceeded in the trial court.

Defendants filed their answers and motions for summary judgment in cases 85CVS6750 and 85CVS6850 on 23 October 1985 and in case 85CVS1796 on 1 November 1985. On 5 November 1985 plaintiff in case 85CVS1796 filed a motion for summary judgment on its prayer for a permanent injunction. This motion was denied.

On 5 December 1985 plaintiffs in case 85CVS1796 made a motion to remove and continue the case in Wake County. The motion was allowed on 20 December 1985. By consent of the parties all four cases were consolidated. In an order filed 13 January 1986, defendants' motions for summary judgment were granted and plaintiffs' complaints were dismissed. Plaintiffs appealed.

The Court of Appeals affirmed the summary judgment holding the statutes constitutional under both the North Carolina and United States Constitutions. Cinema I v. Thornburg, 83 N.C.App. 544, 351 S.E.2d 305 (1987). Judge Becton concurred in part and dissented in part. Plaintiffs appeal.

For the reasons stated in the opinion by Johnson, J., the decision of the Court of Appeals is affirmed. As stated in that opinion, "*our opinion is limited to the constitutionality of the statutes as drawn and we have no basis for deciding the constitutionality of the present applications of the statutes in pending cases.*" *Cinema I Video v. Thornburg*, 83 N.C. App. 544, 552, 351 S.E.2d 305, 311 (1986) (emphasis in original). Fact situations are readily conceivable in which the statutes at issue, if improperly applied, would be unconstitutional. Circumspect application is thus advisable. Mere potential for overbreadth is not dispositive, however; "the overbreadth involved [must] be 'substantial' before the statute involved will be invalidated on its face." *New York v. Ferber*, 458 U.S. 747, 769, 102 S.Ct. 3348, 3361, 73 L.Ed.2d 1113, 1130 (1982). The statutes here, while potentially beyond constitutional bounds if improperly applied, are not so *substantially* overbroad as to require constitutional invalidation on their face.

AFFIRMED.

SENATE JUDICIARY
EXHIBIT NO. 16
DATE 2-9-89
BILL NO. SB 309

[8] Unlike Radford John Ramones, Kurt Lance Nelson was subjected to questioning more than once. He was initially questioned by Officer Mariboho on Christmas Day about harassing calls received by two ministers. Armed with information about threatening calls received by other persons uncovered by the telephone company in the interim, Mariboho returned two days later with another officer, and they subjected the defendant to further interrogation. This was hardly "the same interrogation" conducted on Christmas Day. The officers had new information regarding different offenses, and it was incumbent upon them to "Mirandize" the defendant again.

Since the statements and other evidence suppressed by the circuit court were procured from the defendant through custodial interrogation in violation of the protections guaranteed by the Hawaii Constitution's privilege against self-incrimination, we affirm the circuit court's order of suppression.[10]

STATE of Hawaii, Plaintiff-Appellee,

v.

Brian KAM, Defendant-Appellant.

STATE of Hawaii, Plaintiff-Appellee,

v.

Deborah COHEN, Defendant-Appellant.

Nos. 11861, 11949.

Supreme Court of Hawaii.

Jan. 8, 1988.

Clerks at adult bookstores were convicted in the Circuit Court of promoting pornographic adult magazines, and they appealed. The Supreme Court, 726 P.2d 263, reversed and remanded. On remand, clerks were convicted in the District Court, First Circuit, Honolulu County, James Dannenberg, J., of promoting pornographic adult magazines, and they appealed. The Supreme Court, Hayashi, J., held that: (1) clerks at adult bookstores had standing to assert privacy rights of their customers to purchase sexually explicit adult materials, and (2) statute prohibiting promotion of pornographic adult magazines infringed on customers' right to privacy under State Constitution.

Reversed.

1. Constitutional Law ⇐42.3(1)

Clerks at adult bookstores who were being prosecuted for promoting pornographic adult magazines had standing to assert privacy rights of persons wishing to buy pornographic material. U.S.C.A. Const.Amend. 1; Const. Art. 1, § 6.

2. Constitutional Law ⇐90.4(1)

State may not prohibit individual from possessing or viewing pornographic materials in privacy of his or her own home. U.S.C.A. Const.Amend. 1; Const. Art. 1, § 6.

3. Constitutional Law ⇐18, 82(7)

Hawaii Constitution affords much greater privacy rights than federal right to privacy, and Hawaiian Supreme Court is thus not bound by United States Supreme Court precedents, but may give broader privacy protection than that given by Federal Constitution. U.S.C.A. Const.Amend. 1; Const. Art. I, § 6.

4. Constitutional Law ⇐82(10)

Personal decision to read or view pornographic material in privacy of one's own home is entitled to protection under Hawaii Constitution against government interference. Const. Art. 1, § 6.

5. Constitutional Law ⇐48(1, 3)

Every enactment of legislature is presumptively constitutional, and party challenging statute has burden of showing alleged unconstitutionality beyond reasonable doubt.

10. We do not find it necessary to discuss "the fruit of the poisonous tree" doctrine.

6. Constitutional Law ⇐82(10)
Obscenity ⇐2.5

Statute prohibiting promotion of pornographic adult magazines violated purchasers' right under State Constitution to use those items in privacy of their homes. HRS § 712-1214(1)(a); Const. Art. 1, § 6.

Syllabus by the Court

1. freedom of speech and of the press —in general.

2. A penal statute is vague if a person of ordinary intelligence cannot obtain an adequate description of the prohibited conduct or how to avoid committing illegal acts. Overbreadth occurs if the disputed statute proscribes illegal as well as protected First Amendment conduct.

3. Although the question of standing was not raised by the parties, appellate courts are under an obligation to insure that they have jurisdiction to hear and determine each case.

4. As the ultimate judicial tribunal with final, unreviewable authority to interpret and enforce the Hawaii Constitution, we are free to give broader privacy protections than that given by the federal constitution.

5. The Hawaii Constitution must be construed with due regard to the intent of the framers and the people adopting it. The fundamental principle in interpreting a constitutional provision is to give effect to that intent.

6. A compelling state interest must exist before the government may intrude into those certain highly personal and intimate affairs of a person's life. The personal decision, therefore, to read or view pornographic material in the privacy of one's own home must be afforded the protection of the Hawaii Constitution article I, section 6 from government interference.

7. The Hawaii State Constitution article I, section 6, demands the showing of a compelling state interest. Therefore, unless the State can point to a compelling government interest, the right to privacy is infringed upon by the prohibition against the sale of sexually explicit adult material. Since a person has the right to view pornographic items at home, there necessarily follows a correlative right to purchase such materials for this personal use, or the underlying privacy right becomes meaningless.

8. Every enactment of the Hawaii Legislature is presumptively constitutional, and the party challenging a statute has the burden of showing the alleged unconstitutionality beyond a reasonable doubt.

Jack F. Schweigert, Honolulu (Myer C. Symonds with him on the briefs), for defendants-appellants.

Edward C. Kemper and Daniel R. Foley, for American Civ. Liberties Union of Hawaii, Honolulu, on amicus curiae brief.

Lila B. LeDuc, Deputy Pros. Atty., Honolulu, for plaintiff-appellee.

Before LUM, C.J., and PADGETT, HAYASHI, WAKATSUKI, JJ., and Intermediate Court of Appeals Associate Judge HARRY T. TANAKA, in place of NAKAMURA, J., Recused.

HAYASHI, Justice.

Defendants-Appellants Brian Kam and Deborah Cohen (collectively "Appellants") appeal their convictions for promoting pornographic adult magazines under Hawaii Revised Statutes (hereinafter "HRS") § 712-1214(1)(a) (1985).[1] At trial, Appellants had presented experts plus public opinion surveys to prove that the magazines were not obscene, but Plaintiff-Appellee State of Hawaii (hereinafter "State") had introduced only the magazines to show that the explicit sexual content was pornographic. Appellants contend that 1) HRS

1. In an earlier appeal, we vacated Appellants' convictions because of the trial court's failure to render instructions on the necessity for the jury to determine the prevailing community standards on obscenity. Appellants had also challenged the constitutionality of HRS § 712-1214(1)(a) on vagueness, overbreadth, and privacy grounds, but we declined to rule on those issues then and instead remanded the case for a new trial. *See State v. Kam*, 68 Haw. ——, 726 P.2d 263 (1986).

Oregon - Scott

SENATE JUDICIARY
EXHIBIT NO. 16, p. 4
DATE
BILL NO.

302 Or. 510

[510]STATE of Oregon, Petitioner on Review,

v.

Earl A. HENRY, Respondent on Review.

CC 31-300; 31-301; CA A26439; SC S32941.

Supreme Court of Oregon.

Argued and Submitted Oct. 8, 1986.

Decided Jan. 21, 1987.

Defendant was convicted in the Circuit Court, Deschutes County, John N. Copenhaver, J., of dissemination of obscene material, and he appealed. The Court of Appeals, 78 Or.App. 392, 717 P.2d 189, reversed, and appeal was taken. The Supreme Court, Jones, J., held that obscene expression is protected speech under Oregon Constitution, and thus, statute making dissemination of obscene material a crime is unconstitutional.

Affirmed.

Obscenity ⇐2.5

Statute making dissemination of obscene material a crime is unconstitutional, as obscene expression does not fall within any historical exception to plain wording of Oregon Constitution that no law shall be passed restraining expression of speech freely on any subject whatsoever; disagreeing with *Roth v. United States*, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498; *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031; rejecting *State v. Jackson*, 224 Or. 337, 356 P.2d 495. Const. Art. 1, § 8.

Stephen F. Peifer, Asst. Atty. Gen., Salem, argued the cause for petitioner on review. Dave Frohnmayer, Atty. Gen., James E. Mountain, Jr., Sol. Gen., and Virginia L. Linder, Asst. Sol. Gen., Salem, filed the petition for review.

Timothy J. Sercombe, of Harrang, Swanson, Long & Watkinson, Eugene, and Rex Armstrong, Portland, argued the cause for respondent on review. On the response to the petition for review with Mr. Armstrong was Edward E. Hill, of Larry O. Gildea, P.C., Eugene.

Before PETERSON, C.J., and LENT, LINDE, CAMPBELL, CARSON and JONES, JJ.

[512]JONES, Justice.

Shortly after defendant Earl Henry opened an adult bookstore in Redmond, Oregon, a search warrant was issued by a Deschutes County district judge which resulted in the seizure of almost the entire inventory of the store, including 73 magazines, 142 paperback books, seven newspapers, nine films, one film projector, six decks of playing cards, an additional six periodical magazines, and various business records. Defendant was charged with disseminating obscene material and possession of obscene material with the intent to disseminate under ORS 167.087, which provides in pertinent part:

"(1) A person commits the crime of disseminating obscene material if the person knowingly makes, exhibits, sells, delivers or provides, or offers or agrees to make, exhibit, sell, deliver or provide, or has in his possession with intent to exhibit, sell, deliver or provide any obscene writing, picture, motion picture, films, slides, drawings or other visual reproduction.

"(2) As used in subsection (1) of this section, matter is obscene if:

(a) It depicts or describes in a patently offensive manner sadomasochistic abuse or sexual conduct;

(b) The average person applying contemporary state standards would find the work, taken as a whole, appeals to the prurient interest in sex; and

(c) Taken as a whole, it lacks serious literary, artistic, political or scientific value."

EXHIBIT NO. Addendum
DATE 2-9-89
BILL NO. SB 307 et

2/4/89

Dear Senate Judiciary Committee members,

I recently read that Senator S. Hofman had introduced SB 307 which would ban all exhibition or dissemination of obscenity. I urge you to vote against this bill.

What is obscenity? Is it, for example, the depiction of a violent rape? Perhaps, but wouldn't that make the excellent anti-rape movie "The Accused" illegal? What if it were part of a women's self defense class? Would this exhibition be banned.

Who would rule on what is obscene? In South Africa upstanding, educated white people consider interracial marriage obscene. In this country many people considered "The Last Temptation of Christ" to be obscene. In some places advocating the build up or use of military weaponry to be obscene. No doubt, in some places, capitalism is considered obscene. Can you guarantee that people with different thoughts on obscenity than yours will never be in a position to administer this law?

A free society requires free speech. The price of free speech is having to tolerate a certain amount of garbage. Of course,

(7)

there is material that has no value to society. However, do we really want the government determining what has value and what doesn't? Wouldn't such a move be a step towards totalitarianism?

The answer to unsavory speech is to keep it in the open where it can be examined, discussed, attacked, and discarded for the trash that it is. All opportunity for contradicting destructive material is lost, though, when it becomes a black market item. Please vote against SB307.

Sincerely,
Butch Turk
514 Sherwood St.
Missoula, MT
59802

P.S. I just read that Senator S. Hofman has introduced an apparently related bill, SB342. I hope you will vote against this bill, also. Under it, it seems you could ban many Sat. morning violent TV shows. Most experts feel these may be "harmful" to children, too. Do you really want to get into that. Let's let parents control their kids input, not government.

Closing Statement

Take a real good look at the amendments. We know what they want but make sure it will meet constitutional requirements.

5132 prevents Porn Mag 7% down interest on a Retirement Base.

Mr. Menard says it is un

SENATE JUDICIARY
EXHIBIT NO. 16 10-1
DATE 2-9-89
BILL NO. SB 307

SENATE BILLS 263, 307 AND 342

Senator Sam Hofman

Pornography erodes the moral values of our society. It contributes to an ever increasing number of sexual assaults against children and women and is far different from the "Girlie" magazines so many of us think occupy our newsstands.

We know that child sexual abuse rose by 175 percent between 1981 and 1985. We know the rape rate in the United States has increased more than 700 percent since 1933. We are aware of studies that reveal that 77 percent of child molesters of girls admitted initiating the sexual behavior they had seen in pornographic displays. We have been told of a Michigan State Police study which demonstrated that of 38,000 sexual assault cases on file in Michigan 41 percent involved pornography just prior to the act or during the act. We know of a study released by the University of New Hampshire in 1984 that showed that the states with the highest readership of pornographic magazines also had the highest rape rates. And we know of Ted Bundy's admission that pornography fueled his murderous rages.

How much more scientific data do we need before we believe what our common sense has been telling us all along? The evidence is in and it is overwhelming. The experts, such as Doctor Victor Cline, have made it clear: pornography is highly addictive; as time goes on rougher and rougher material is necessary to get a sexual high; gradually what was once awful and shocking becomes acceptable and commonplace; and then those who look at pornography begin to do the things they have seen.

There are times when I ask myself "what has happened to us?" Why are so many of our young people doing and getting involved in so many terrible things? Why are they rushing to sell themselves into bondage? Why are they so bent on destruction?

Maybe the answer to those questions is what Plato said three centuries before Christ when he remarked: "What is honored in a country will be cultivated there."

What is it that we honor in this country?

In 1985 pornographers in America made 8 billion dollars - more than the legitimate film and record industries combined. Up to 20,000 "adult" bookstores and 14,000 video

SENATE JUDICIARY
EXHIBIT NO. 16, p. 2
DATE 2-9-89
BILL NO. SB 367 etc.

cassette suppliers feed the hunger for more. More than 400 porno magazines appear annually catering to a growing market for kiddie-porn, sadomasochism, incest and Nazi-porn. And 80 percent of the retail porn industry is owned by organized crime.

What is it that is being cultivated in this country? Increasingly violent

Are we providing a lesson in First Amendment principles or conditioning a whole generation with ~~slanbor~~ films that bombard their consciousness with alternating erotic and sadistic images that ultimately lead to pain and difficulty for so many of our sons and daughters.

The time to stop this shameful mess cannot be put off any longer. We have fought for our way and quality of life with much less evidence to indicate its peril than that which threatens so many of those among us because of the spread of pornography.

~~We cannot let this cup pass -- I hope and pray you will look upon this legislation favorably~~.

WE AS LEGISLATORS, HAVE THE RESPONSIBILITY OF PASSING LAWS GIVING THE PEOPLE, THROUGH THEIR LAW ENFORCEMENT AGENCIES AND PROSECUTORS THE TOOLS THAT THEY NEED TO MAKE MONTANA A CLEAN, PURE, AND SAFE PLACE TO WORK, PLAY AND LIVE IN PEACE.

WE CANNOT LET THIS CUP PASS. I HOPE AND PRAY THAT YOU WILL PASS THIS LEGISLATION.

DATE 2-4-89

COMMITTEE ON Judiciary

1 of 5

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
REV. STEVE C. ALLSOP	LUTHERAN CHURCH - MISSOURI SYNOD	263 342 307	X	
LEN MUNSIL	LEGAL COUNSEL, C.D.L.	263 342 307	X	
RUSS OSENBACH	DIST #5 JUVENILE PROBATION	263 307 342	X	
Aubyn Curtiss	Self - former Rep Dist 20	342 263 307	X	
John Ortwein	Montana Catholic Conference	263 307 342	X	
Don Johnson	Mt. Citizens for Recovery - Mela	263 307 342	X	
Richard L. Moore	Mt. Citizens for Recovery Southern Baptist	263 307 342	X	
Norma Austin	[illegible]	263 342 307	X	
Jim McGillvray	MCRL - YC	263 307 342	X	
Randy Vogel	Billings Police	263 307 342	X	
Gayle Paden	Libby	263 307	X	
Judy M Graham	Libby	342 263, 307	X	
DON NELSON	KALISPELL	342, 263 307	X	
Lloyd Reinstein	Libby	342 - 263 307	X	
Marc Cramer	HELENA	342-263 307	X	
Bill Edwards	NORTHWEST INDIAN BIBLE SCHOOL	363 - 342 307	X	
David W LaFollette	Albertsons montc	342 - 363 307	X	
Rev. Paul Taylor	Wesleyan Methodist - Missoula	342-363 307	X	
Carl Smith	Secy - LDS Church	342 - 263 307	X	
Emerson T. Lebien	Hammond St Bapt Church	342 - 263 307	X	
David E Engstrom	"	342 263 307	X	
Dawn Engstrom	"	342 - 263 307	X	
Victor J Berg	Kilmer Church of the Nazarene	342 - 263 307	X	
William C. Howard	" "	342 - 263 307	X	
Deborah Henrie	LDS Church Helena	342 - 263 307	X	
Charles R. Brooks	Myself - Billings, MT	342 - 263 307	X	

(Please leave prepared statement with Secretary)

2/10/89

Testifying Proponents ~~Opponents~~

263,342,307

PS 2 of 5

NAME	REPRESENTING	Hmp #	Testimony Exhibit #	Testimony Tape Counter
Sharon Morton	self			
Marlene Voge	self			
Lem N. Kellogg	self			
Betty Lacy	Self			
Penny Swanson	self			
Mandi Flynn	"			
Jean Wise	Helena Middle School			
Carrie Dodson	Helena Middle School			
Lois Adams	" School			
Jon Robison	Helena Middle School			
Marian Boylan	Big Sandy			
Ruth Hofman	Mr. Potts			
Velma Barker	Big Sandy			
Steve Matheson	self / Inland Steel Employee			
Bob Cook	Hannaford N. Big Sandy Chapter			
Carl Crosby	Hannaford Big Sandy Chapter			
Lorna Cyprian	self / Hannaford Big Sandy Chapter			
David Engstrom	"			
Elsie B. Rice	407 N. Ewing Helena			
Robert M. Rice	Self			
Sheila Cates	Montana State Library			
Ann Anderson	Dept Commerce Helena			
Mrs. O. J. Myers	Mt. Chem. Co. Milltown Mt			
Robert W. Pancratz	5666 Bunyan Dr Helena MT			
[illegible]	[illegible]			
Lilla Woodland	[illegible] Helena MT			

Testifying Proponents
~~Opponents~~

2/10/89
PS 3 of 5

263,342,307

NAME	REPRESENTING	Hmp #	Testimony / Exhibit #	Tape #
Beverly Womstad	416 Graham Helena			
Bob Brown	801 N. Washington Ed			
Dan Kelly	Boise Dulcet Chorus			
Trevor Buttrick	120 Beaumont Lewis & Clk			
A.C. Reichmuth	3285 Highland			
Shy Markland	3700 Willard number 63			
Nathan Tweed	2465 E. Harvard			
Ron Waters	2201 N. Skyline MD			
Ryan Carter	1201 N Washington St			
Dugan Keller	1110 LeGrande			
Kate Nelson	7335 Hwy 12 Lolo			
Rosemary Mitchell	6641 Hampton Rd.			
Lesa Knudson	Canyon Creek 59633			
Ryan Deters	822 Madison Ave.			
Matt Tittle	535 Hwy 12 W.			
Regan Kelley	1330 Legend Canyon			
Maria Nielsen	7555 Hwy 12 W.			
Dawn Deters	822 Madison AVE.			
Annalisa Wilson	416 Graham Helena, Mt.			
Tom Cleveland	416 Graham Helena mt			

2/10/89

263,342,307 PSY of 5

Testifying Proponents
Opponents

NAME	REPRESENTING	Hmp #	Testimony Exhibit #	Testimony Tape Cnt
Tasha Bryan-Hatt	Yellowstone Kelly's	307 342		
Karen Lucas	900 Phillips #24	307 342		
D.A. Hewitt	Helena, MT	342 307		
Charles D. Brown	1330 Resta, Helena	307 342		
Mary A. Brown	1330 Resta, Helena	342 307		

DATE 2-10-89

COMMITTEE ON Judiciary

5 of 5

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
ERRY CROOKS	Montana Citizens for Decy	307 342 263	X	
Robert Scott	ACLU of Montana	307 342 263		X
Robert Scott	Self	307 342 263		X
WALTER L. JACKOVICH	Self	263 307 342		X
Mignon Waterman	MT. Assoc. of Churches	263, 307 342	X	
Jon D. Berg	Self	263 307 342	X	
Jack P. Haffey	self	263, 307 345	X	
Patty Carroll	Pro-Family Women's Lobby	263, 307 342	X	
Lynn A. Conner	Self- Gateway Church	263, 307 342	X	
Lyle R. Benson	Evangelical Covenant Church	263 307 342	X	
[illegible]	Christian Reformed Church	263, 307 342	✓	
Mark Mozer	MT Citizens Dec	263 307 342		
M.L. SWANN	HAMILTON ST BAPTIST			
Bryan Asay	Mt. Family Coalition	263, 307 342	X	
Donna Vandenacre	Pro Family Women's Lobby	263, 307 342	X	
Jill Guthrie	Pro Family Women's Lobby	263, 307 342	X	
Frank E Burkee	Montana Lawyers			
Bob Burkee	Assn	#263	X With Amendment	
Philip Strope				

Senator Beck asked why Senator Yellowtail chose the age of 16 in the amendments. He was told that referred to children appearing in "kiddy porn". "Minor" referred to the display of material.

Senator Mazurek asked about amendments that might apply to the sale of liquor and liquor licensing relating to motel or hotel owners. Valencia said she felt the intent was to take the law back to what it currently was, and to limit the scope of the bill to distribution of obscenity to minors. It would also limit access to anyone regardless of age the masochistic or kiddy porn, she said.

Amendments and Votes: Senator Yellowtail MOVED the amendment. The MOTION FAILED on a vote of 1 to 9 with Senator Yellowtail voting YES.

Recommendation and Vote: Senator Yellowtail moved that SB 307 DO PASS. The MOTION CARRIED UNANIMOUSLY.

DISCUSSION ON SENATE BILLS 263 and 342
(Previously acted on in committee on 2-11-89)

Senator Crippen told the committee that, because of the numerous phone calls and letters regarding the other two obscenity bills, he had not turned in the standing committee reports. He wanted to give the committee an opportunity to reconsider them and their amendments before reporting them out of committee. After discussion of the amendments and the reasons for them, it was decided to turn in the standing committee reports without reconsideration of them.

EXECUTIVE ACTION ON SENATE BILL 353

Discussion: Sheriff O'Reilly stated that the amendments he saw were the ones "we" requested, except that they did not strike fiscal language in Section 6. The language that they asked for had been included in Section 5. "Requested an agency to receive assistance" had been corrected, he said, as well as the effective date.

Amendments and Votes:
Senator Halligan MOVED the amendments. (See Exhibit 9)

Valencia Lane stated that they simply requested on page 3,

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-15-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS			✓
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on March 21, 1989, at 7:40 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. John Mercer

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILLS 263, 307, 342

Presentation and Opening Statement by Sponsor:

Sen. Sam Hofman, Senate District 38 stated that the first bill, SB 263 is an act to prohibit certain sexual conduct on a premises licensed to sell or dispense alcoholic beverages for consumption. Section 1 deals with definitions, section 2 is a detailed explanation of the actual acts and conduct that may not be done while on the premises, section 3 talks of the showing, displaying or exhibiting of this material; films, pictures, electronic reproductions, etc., section 4 states an operator may not knowingly permit a person to view such actions from the licensed premises or by a glass partition or other means, section 5 deals with the employment of the employees of the establishment and section 6 discusses penalties.

SB 307 is an act prohibiting a person from exhibiting or disseminating obscenity to any person regardless of age. Section 1 deals with definitions, sub-section 2, line 16 on page 1 through line 1 on page 2 is the Miller vs. California decision of the Supreme Court of the United States of 1973. Section 2 describes when a person commits the offense of obscenity and what he does in doing that. Sub-section 3 states that a person is guilty of an offense of obscenity if he knowingly or purposely creates, buys, sells, procures or possesses obscene material. Sub-section 4 deals with penalties and section 3 of page 4 has to do with motion picture theatre employees.

SB 342 is an act to prohibit the display and dissemination of material harmful to minors. Section 1 is definitions and sub-section 1 is again, the Miller vs. California Supreme Court decision. Page 4, section 2 describes the public display of dissemination of material harmful to minors; what that is and what it is considered to be. Section 3 deals with penalties, section 4 of page 5 is obscenity and a description of what the person does when he commits the offense of obscenity. Sub-section 2 on line 6 describes "a thing is obscene if" stating the description thereof. Section 5 is again the motion picture theatre employees not liable for prosecution and sub-section 4, line 13 are the penalties.

Testifying Proponents and Who They Represent:

John Ortwein, Montana Catholic Conference
Reverend Steven Carlson, Members of Montana Religious Alliance for Decency
Victor Cline, Clinical Psychologist, University of Utah
Len Munzel, Citizens for Decency, Phoenix, Arizona
Mignon Waterman, Montana Association of Churches
Marc Racicot, Attorney General
Aubyn Curtiss, Fortine, Montana
Sen. Larry Stimatz, Senate District 35, Butte
Terry Crooks, Libby, Montana
Joanne Sheer, Pro Family Womens Lobby
Russ Osenbach, Juvenile Probation Officer of Jefferson County
John Moe, Lolo, Montana
Tommy Gilbrey, Billings, Montana
John Berg, Correctional Treatment Supervisor, Mont. State Prison
Don Nelson, Kalispell, Montana
Walt Dupea, Big Fork, Montana
Pastor Marc Cramer, Helena
Mark Kelly, Helena
Florence Wilson, Bozeman, Montana
Don Johnson, Missoula

Proponent Testimony:

John Ortwein, representing the Montana Catholic Conference stood in support of Sen. Hofman's proposed legislation and submitted written testimony (EXHIBIT 1).

Reverend Steve Carlson, speaking on behalf of the Montana Religious Alliance for Decency, representing over 200,000 Montanans, urged the committee's support of Senate Bills 263, 307 and 342 (EXHIBIT 2).

Victor Cline, a professor of clinical psychology at the University of Utah submitted written testimony stressing issues regarding the harmful effects of the use of obscenity (EXHIBIT 3).

Len Munzel, Legal Council for Citizens for Decency through Law, based in Phoenix, Arizona stated that he would like to approach the proposed bills by addressing some of the myths and hysteria surrounding this legislation. Myth 1 - this law is unconstitutional because it violates the first amendment. This law is not unconstitutional. The Supreme Court has stated time and again that obscene material is unprotected by the first amendment. Myth 2 - who knows what is obscene? In 1973 the Supreme Court defined what is obscene with a specific, clear, three part test for what constitutes obscene material. Myth 3 - the passage of these bills will mean that classic literature will be banned if this obscenity legislation becomes law, as well as PG and R rated films. This argument is untrue. For material to be banned it must lack serious literary, artistic, political or scientific value according to a reasonable person. Mr. Munzel commented that this bill is not regarding R rated films or films that show occasional nudity or simulated sex, they are talking about beginning to end scenes of explicit sex and intercourse designed only to arouse sexual interest in viewers. They are not talking about magazines such as Playboy or Penthouse, they do not meet the three part test of obscenity. They are talking about hard-core pornography. Magazines that explicitly show bestiality, rape, sexual torture, sodomy, etc. Mr. Munzel, referring to SB 307 stated that Montana is not out in front on this issue . . . they are far behind. Laws prohibiting obscenity currently exist in the vast majority of states and have been passed by Congress. This proposed law, despite what the opponents may have to say, goes not further than any other legislation. It breaks no new ground in terms of the constitution. Additionally, it is the consensus of law throughout the United States that there is no major interstate distributor of hardcore pornography who is not connected to organized crime. That means that this 8 billion dollar a year industry feeds money into every other organized crime activity . . . drugs, illegal gambling, racketeering, loan sharking, prostitution, etc.

Mignon Waterman, representing the Montana Association of Churches submitted written testimony voicing their support of the proposed legislation (EXHIBIT 4).

Attorney General, Marc Racicot, stood in support of the introduced bills, namely SB 307 at the request of Sen. Hofman. He reminded the committee that this bill overwhelmingly passed the Senate, it is the law in 44 other states, it is the law as far as the federal government is concerned, and in his view it is not a radical departure from what they presently have on the books. The test for obscenity, however, remains essentially the same as it is in the present law. The major difference is that it changes the age requirement and disallows not only minors from having pornography that is obscene in their possession, but

also adults as well. Speaking to the committee from a criminal justice perspective having been involved in the prosecution of cases over the past 16 years in the area of child abuse, he has continually found during the course of those prosecutions that the presence of these kinds of materials have been involved in those kinds of cases. Mr. Racicot listed statistics from the report of the Attorney General's Commission on Pornography and stated that there are some very serious health concerns about this problem. He commented that he realizes that this is a very difficult topic, but he is firmly convinced that we cannot be paralyzed by allegations that somehow we are impinging upon the constitutional rights that we hold so dear. There is no question that we have to pay every bit of attention that we possibly can to that area. He asked the committee to make their decision on this case based upon facts and not upon hysteria.

Aubyn Curtiss presented written testimony accompanied by letters of support from Lt. Donald H. Bernall, Lincoln County Sheriff's Department and Susan Loehn, Lincoln County Attorney (EXHIBITS 5-8).

Sen. Larry Stimatz, Senate District 35 stated that the Supreme Court of the United States has said in many cases that obscenity is not a constitutionally protected form of expression. That is not to say that the first amendment is unimportant, it will be observed in reference to the proposed bills. These bills, if passed, will codify Montana law and Montana needs these bills. He urged the committee to give SB's 307, 263 and 342 favorable consideration.

Terry Crooks of Libby stated that a lot of what is happening is the result of U.S. Attorney Pete Dunbar's encouraging legislation against this kind of obscene activity. He submitted a copy of a letter from the U.S. Attorney (EXHIBIT 9) as well as a proclamation made by former Governor Schwinden on Pornography Awareness Week (EXHIBIT 9), a Report of the Attorney General's Commission on Pornography (EXHIBIT 11), University of Michigan Journal of Law Reform (EXHIBIT 12), Oklahoma City rape statistics (EXHIBIT 13) and case histories regarding obscenity suits (EXHIBIT 14 and 15).

Joanne Sheer representing the Pro-Family Womens Lobby commented that pornography not only leads to violent crimes against women and children, but also brings ruin and devastation to the lives of the young female performers who are often coerced and forced into commercial pornography. Nothing she could say could speak about the true horrors of pornography better than the testimony of Andrea Dwarkin. Mrs. Sheer quoted excerpts from Mrs. Dwarkin's testimony stating "In a country where I live as a citizen there is pornography of the humiliation of women where every single way of humiliating a human being is taken as a form of sexual

pleasure for the viewer and for the victim. Where women are covered in filth, including feces, mud, paint, blood, etc. where women are tortured for the sexual pleasure for those who watch and for those who do the torture. Where women are murdered for sexual pleasure. And this material exists because it is fun, because it is entertainment, because it is a form of pleasure, and there are those who say that it is a form of freedom. I am asking you to help the exploited, not the exploiters. You have a tremendous opportunity here. I am asking you as individuals to have the courage, because I think it is what you will need to have to actually be willing, yourselves, to go and cut that woman down, and untie her hands, and take the gag out of her mouth and do something for her freedom."

Russ Osenbach, Juvenile Probation Officer of Jefferson County in Boulder stated that the components of sexual deviances are conditioned learned behavior. They are learned by exposure to deviance and the way the deviance is usually exposed to those people is through the use of pornography.

John Moe of Lolo, Montana submitted testimony voicing his support of the proposed legislation (EXHIBIT 16).

Tommy McGillvray of Billings brought before the committee testimony from Randy Vogel of the Billings Police Dept. (EXHIBIT 17).

John Berg, Correctional Treatment Supervisor at the Montana State Prison submitted testimony as well as letters from inmates of the prison testifying to the impact that pornography had on their lives (EXHIBITS 18-21).

Don Nelson from Kalispell submitted EXHIBIT 22.

Walt Dupea of Big Fork presented EXHIBIT 23.

Pastor Marc Cramer urged the committee's concurrence of the proposed bills as did Pastor Mark Kelly of the Mount Helena Community Church, Florence Wilson of Bozeman.

Don Johnson of Missoula submitted testimony from Dennis Richards with the Mansfield Library of the University of Montana (EXHIBIT 24).

Additional testimony that was presented to the committee in favor of the proposed legislation is listed as EXHIBITS 25-38.

EXHIBIT 39 is signed petitions from supporters of SB's 206, 307, 342.

Testifying Opponents and Who They Represent:

Sen. Chet Blaylock, Senate District 43
Mark Staples, Mt. Book Sellers Assoc.
Rebecca Reno, President and Chief Executive Officer of Common Entertainment
Sid Thomas, Billings Attorney
Payton Terry, Pres. Montana Assoc. Theatre Operators
Charles Walk, Executive Director of Montana Newspapers Assoc.
Mike Voller, Lee Newspapers of Montana
Margaret Hollow, Self
Dan Clusman, Bozeman, Excellance Theatres
Bonnie Steel, Video Store Operator
Barry Ferst, Associate Professor of Philosophy, Carroll College
Mark Watkins, Co-owner Freddy's Feed and Read, Missoula, Montana
Dr. Anne Pincus, Clinical Psychologist, Helena
Pat Blade, Book Sellers Assoc.
Jane Costrom, Licensed Clinical Social Worker
Mindy Quivik, Butte Booksellers
Dr. Wendell Curry, Bozeman Psychiatrist
Sherry Matteucci, Billings, Montana
Dave Nelson, Executive Director, Montana Arts Council
Richard Miller, Montana State Librarian
Deborah Schlesinger, Legislative Chair, Montana Library Assoc.
Mark Trafton, Cascade County Tavern Assoc.
Gilbert Milligan, National Video
Robert Scott, ACLU
Jim Omney, Director, Great Falls Public Library
Beth O'Hallorin, Montana Federation of Teachers
Bob Hollow, Helena News Agency
Stan Frazier, Self, Helena
Corky Skinner, President, Billings Mental Health Assoc.
Lanny Wagner, Billings Theater Operator
Tim Kayhill, Professional Writer of Livingston, Montana
Jeff Kessler, Vice-President, Common Enterprises
Richard Swanson, Helena Artist
Gloria Hermanson, Montana Cultural Advocacy
Arnie Malina, Director of Helena Film Society
Deon Smith, Owner of Video Store and Theater in Harden, Montana
Scott Crighton, Executive Director of ACLU
Verle Clark, Bozeman Film Buyer for Excellence Theaters
Budd Polver, Butte
Walter Jakovich, Butte

Opponent Testimony:

Sen. Chet Blaylock, Senate District 43 commented that he would like to primarily address SB 307. Sen. Blaylock stated that he would like Sen. Hofman to address in his closing why he so badly wants this legislation to pass when we already have 45-8-201 on the current statute. He urged each of the committee members to read 45-8-201 and 45-8-202 as it is very explicit as well as being a good law. He commented that he is concerned with the broadness of this bill and what effect it may have regarding movies. Under section 1,

sub-A defines sexual conduct as may be portrayed in movies. It states sexual conduct includes vaginal, anal or oral intercourse whether actual or simulated, normal or perverted. With that definition movies in our community could be banned. This bill is too broad, it extends it from protection of the youth and extends it to the adults. It is the argument of one mans art is another mans pornography. Everyone has their own definitions and standards of what they think is right. Sen. Blaylock once again urged the committee to read 45-8-201 and 45-8-202 and to kill SB 307.

Mark Staples, representing the Montana and American Booksellers Assoc. stated that this legislation is overly vague, overly reaching, largely unenforceable and cannot accomplish its dubious intent. Additionally, there is already confident law in place. Without massive amendments, these bills should not pass. Doctors, lawyers, scientists, artists and business people as well as other citizens; 5,000 of whom have signed petitions urging the committee not to pass this legislation. Mr. Staples commented that he joins them in taking a stand against this type of legislation.

Rebecca Reno, President and Chief Executive Officer of Common Entertainment which operates Video Library and Video Excitement stores in Montana, Idaho, Arizona, Utah and California. She stated that she would not be before the committee if she did not feel that it is a threat to their Montana business. The proposed bills need to either be amended or killed. If the proponents are serious in their public statements that they don't intend for these bills to include or effect R rated movies, then the bills will need to be amended. She stated that she operates her stores with delicacy and good standards. Their procedures are strict and their people are very serious about making sure that they are implemented.

Sid Thomas commented that there are significant problems with this legislation. Not only constitutionally, but in terms of the current statutes. Additionally, SB's 307 and 342 have not been enacted in 44 other states. There is legislation regarding obscenity in 44 other states; however, SB's 307 and 342 are significantly different from much of the other legislation that exists in those states. The main constitutional problem with this particular legislation is that it is vague. That vagueness means that booksellers and video rental people have to judge for themselves what is obscene - that is considered self censorship, which is prohibited. Secondly, it doesn't provide for procedural protection. In short, there are significant problems with these bills. Certainly, no body is in favor of pornography, particularly when it applies to juveniles. Mr. Thomas suggested that these bills should either be tabled or amended.

Peyton Terry, President of the Montana Assoc. of Theater Operators submitted testimony in opposition to the proposed bills (EXHIBIT 40).

Charles Walk, Executive Director of the Montana Newspaper Assoc. assured the members of the committee that Montana's newspapers never have been, are not now, nor do they plan to be purveyors of obscenity or pornography. These newspapers have been, are now, and plan to be in the future part of the foundation of free expression throughout the State of Montana. Mr. Walk presented testimony voicing the Association's opposition regarding Sen. Hofman's legislation (EXHIBIT 41).

Mike Voller, representing Lee Newspapers of Montana stated that they too take the same stand as the Montana Newspaper Assoc. in opposing these bills.

Margaret Hollow commented that she objects to her life being legislated and that the issue of obscenity does not need to be legislated any more than what it already is. She referred to a comment made by one of the proponents stating that pornography is addictive. We happen to live in a state that promotes and endorses gambling and alcohol. Aren't those substances considered addictive? She feels that people are intelligent and responsible enough to raise their own children without their families being legislated upon.

Dan Clusman of Bozeman, representing Excellence Theaters stated that any bill that invites legal harassment of a business or that invites litigation is not a good bill. These bills do both. The problem with any and all bills that attempt to limit pornography lies in their inability to define it. Pornography is strictly in the eye of the beholder as to when sexually oriented material crosses that undefined line into becoming obscene. Passage of this bill will hurt every group involved including the tax payers of Montana. It will have practically no impact on the manufacturers and distributors of sexually explicit material. Mr. Clusman stated that the proponents of these bills assured them that the proposed legislation is not meant to hurt or harass the theater owners; however, there is no guarantee that they will be protected. Unreasonable pressure is being placed on the legislators to pass a bad bill. They say that theater owners that play major motion pictures will never be found guilty by these bills, but how many times will they have to spend their time, energy and their money in court defending that innocence.

Bonnie Steel submitted testimony stating her opposition to SB's 307, 342 and 263 (EXHIBIT 42).

Barry Ferst, an Associate Professor of Philosophy at Carroll College presented EXHIBIT 43.

Mark Watkins, co-owner of Freddy's Feed and Read in Missoula stated that the theater owners addressed a concern that booksellers additionally share. That is the harassment aspect of SB's 307 and 342. He commented that he has better things to do than constantly be defending himself from accusations of supporting the pornography industry. Mr. Watkins presented testimony listed as EXHIBIT 44.

Dr. Anne Pincus, a licensed Clinical Psychologist in Helena stood in opposition to the proposed bills before the committee and submitted testimony stating her views (EXHIBIT 45).

Pat Blade and her husband Art have been proprietors of bookstores in small Montana communities for 10 years. If SB's 307 and 342 are passed it will put an end to their booksellers career. Mrs. Blade submitted EXHIBIT 46.

Jane Costrom, a licensed clinical social worker who has been treating sex offenders on a full time basis for the past 4 years stated that there are 3 points that she would like to make: 1.) She has never heard a sex offender tell her that pornography made them commit their crime. 2.) If a sex offender does use pornography then he needs to be responsible for his own behavior. 3.) Minors are more likely to be harmed by someone they know, and it is possible that they could be a family member. She stated that she is disturbed at the narrow defining of materials harmful to minors only includes materials having sexual content to them. Are we not concerned about violence on television or with violence in the movies?

Mindy Quivik from Butte Booksellers presented to the committee a letter from Mr. Ivan Doig, a writer who grew up in White Sulphur Springs stressing his concern and opposition to SB's 307 and 342 (EXHIBIT 47).

Dr. Wendell Curry, a certified psychiatrist from Bozeman stated that his main concern is with unbonded children. With more mothers working and issues of child care centers and teenage pregnancies, the children are just not getting the parenting and mothering that they have had in the past.

Sherry Matteucci, a lawyer from Billings stated that this bill, if passed, will require a form of pre-censorship by public libraries. Ms. Matteucci presented testimony stating her opposition to the proposed bills (EXHIBIT 48).

Dave Nelson, Executive Director of the Montana Arts Council commented that no group in history will be more effected by censorship than the artist. He feels that "if it isn't broke, don't fix it", and that the existing law is just fine.

Richard Miller, a Montana State Librarian asked of the committee to oppose SB's 307 and 342.

Deborah Schlesinger, Legislative Chair of the Montana Library Association stated that the Assoc. opposes SB's 307 and 342 for the previous reasons stated (EXHIBIT 49).

Mark Trafton, representing Cascade County Tavern Association stated that they are opposed to SB 263 and submitted proposed amendments for the committee's review (EXHIBIT 50).

Gilbert Milligan, owner of National Video in Missoula stated that he feels that SB's 342 and 307 would open a pandorous box for him as it places him in a very difficult position. What one might consider obscene, another might consider art and beautiful.

Robert Scott from the ACLU stated that they are in opposition to all three of the proposed bills and submitted EXHIBIT 51.

Jim Omney, Director of the Great Falls Public Library stood in opposition to SB's 307 and 342.

Beth O'Hallorin of the Montana Federation of Teachers rose in opposition to SB's 307 and 342 on behalf of their librarian members in Jefferson County and Butte Silver Bow.

Bob Hollow, the current owner of the Helena News Agency, a periodical distributor for the Helena area commented that this bill would be impossible for him to follow by and submitted an article listing magazines that could possibly be removed from the booksellers shelves (EXHIBIT 52).

Stan Frazier commented that he is opposed to all three of the proposed bills and feels that they are a religious issue and do not deserve the consideration of the committee.

Corky Skinner of Billings, Marketing Director of the Alberta Bera Theater and President of the Billings Mental Health Association strongly urged the committee to oppose SB's 307 and 342. He feels the present statute not only protects our children, but also protects our own civil liberties.

Lanny Wagner, a theater operator in Billings for the past 20 years strongly opposes this legislation.

Tim Kayhill a professional writer of Livingston stated that what he reads in these bills is very frightening for people in his line of work.

Jeff Kessler, Vice-President of Common Enterprises urged substantial revision of SB's 307 and 342.

Richard Swanson a local Helena artist stood in opposition to the proposed bills.

Gloria Hermanson, representing the Montana Cultural Advocacy submitted testimony against the passage of SB's 307 and 342 (EXHIBIT 53).

Arnie Malina, Director of the Helena Film Society urged the committee to vote against the proposed bills.

Deon Smith, owner of a theater and video store in Harden, Montana stated that she is strongly opposed to these bills.

Scott Crighton, Executive Director of ACLU of Montana stated that they are concerned about these bills, not only in protecting the first amendment, but also in terms of minority religious opinions effecting public policy.

Verle Clark, a film buyer for excellence theaters out of Bozeman requested to be on record as opposing these bills.

Budd Polver of Butte stood in opposition to Sen. Hofman's proposed legislation and urged the committee to vote against the bills.

Walter Jakovich of Butte commented that as citizen of Montana he feels that there is too much hysteria ruling our country and voiced his objection to SB's 307, 342 and 263.

Additional testimony was submitted and is listed as EXHIBITS 54-58.

EXHIBIT 59 is signed petitions submitted by Mark Staples from people opposing the passage of SB's 307, 342, 263.

Questions From Committee Members: Rep. Hannah questioned Sid Thomas as to why SB 307 is such a constitutional and serious threat to the people that are the legitimate booksellers and theater operators in Montana. It appears to be a re-statement of what the Supreme Court has already set regarding contemporary community standards. Mr. Thomas replied that the constitutional protection of the Miller case are written in a slightly different form than SB 307. The language in SB 307 goes far beyond that of most other states. It is the vagueness of the definition of obscenity that causes a problem.

Rep. Daily questioned Marc Racicot as to why we need SB 342 when we already have 45-8-201. As he reads them, they both basically say the same thing. Mr. Racicot stated that 45-8-201 is the obscenity section which is most closely related to SB 307. If Rep. Daily is speaking of public display and the harmful to minors statute, that would relate to 45-8-202 which concerns public display of offensive material. SB 342 obviously changes the kinds of definitions and kinds of standards as well as restrictions. SB 342 is more specific, it does change the standard in many ways with different language and it is similar to other statutes around the

nation. In reference to SB 307 and 45-8-201, he doesn't believe that the test changes at all from section 201 to SB 307. The Miller test is the same in both cases. The statute is more clear and cleans up the definitions. The major change is the age requirement and an increase in the penalties

Rep. Addy questioned Mr. Racicot if he had made any preliminary determination as to the constitutionality of all three bills. Mr. Racicot stated that in reference to SB's 342 and 263 he had not. His point on speaking on SB 307 was to speak about the connection between what is truly pornographic and obscene material and its connection and relevance to the criminal justice system. The judgement as to SB 263 is obviously one that is left to the ultimate wisdom of the committee. In his mind, if SB 307 passes, SB 342 will not have near the employment as SB 307 would.

Rep. Addy questioned what the Attorney General could do as a prosecutor with SB 307 that he could not do not with 45-8-201. Mr. Racicot stated that the only thing that changes other than the penalty is that it would remove some materials for sale that could now be possessed by adults.

Rep. Brown questioned Sen. Hofman as to why it wouldn't be better to have issues such as the proposed bills are left to the local communities for their own decision making. Why bring this matter before the legislature to decide? Sen. Hofman stated that they are left to local discretion if they so choose. As far as the state is concerned, part of his purpose in this legislation was to get in ahead of the problem. He would rather have the law in place so that we do not get a problem, rather than try to correct a problem once it has arrived. Rep. Brown expressed to the Senator that maybe the reason that there aren't more communities in Montana taking advantage of the existing law is because maybe the people don't want it. Sen. Hofman replied that from everything that he has heard there are more than 80% of the people in the State of Montana that want this legislation passed. That tells him that there are people out there that are concerned.

Closing by Sponsor: Sen. Hofman stated that he would like to answer Sen. Blaylock's question as to why he wanted these bills passed in the State of Montana. Sen. Hofman responded that he wants Montana to be a decent place to live. The reason he wants them in addition to what they already have on the statutes is because the bill that is currently law does not control adult book stores, porno shops or triple X movie houses. He stated that Sen. Blaylock is misunderstanding what the point of the Miller vs. California Supreme Court decision says. It states, one of the three criteria that have to be met is that anything that is not considered obscene has to have some literary, political, artistic or scientific value. Anything that has that is not

considered to be obscene or pornographic. Sen. Hofman commented that they are not trying to get to the people that are running Montana businesses, they are trying to get to the operators of adult bookstores and pornography shops. Additionally, the argument that the opponents made about there being a lot of cases and law suits is not true. With other states that have passed this law there are generally about 2 cases at the most brought about, sometimes 3. Continuing, Sen. Hofman referred to what Charles Walk said about free expression. Free expression is something that is protected by the first amendment; however, obscenity is not. Obscenity is not a protected expression, it is a crime. 90% of the traffic of hard-core pornography in this country is controlled by organized crime. Pornography is an $8 billion industry, it includes laundered cash from narcotics, gambling, prostitution and other organized crime activities. The porno syndicate consists of perhaps a dozen major distributors who supply virtually all adult book stores and theaters in the United States. Almost all are affiliated with organized crime syndicates. There are 5 mafia families that control nearly all obscene materials and all the child pornography. The Adult Film Association of America produces virtually all the hard-core movies and video cassettes. These are reproduced and made into video tapes and magazines and then distributed by the porn syndicate to local retailers, the cable industry, the video cassette outlets nation wide and in foreign countries. A large percentage of the child pornography is photographed by individual child molesters; however, most child porn magazines are professionally photographed by those working in or for the porn syndicates. There are probably 100,000 children that are molested every year and are being used as prostitutes and being photographed for child pornography.

Sen. Hofman stated that he would like to make a comment regarding the opposition of the ACLU. The ACLU Official Policy Guide, published in 1988 clearly states that the ACLU opposes any restraints concerning obscenity, pornography or indecency including the distribution to minors. The ACLU gives public school personnel the right to establish the curriculum and reject the rights of parents, individually or in groups, to have any decision making role whatsoever. The ACLU opposes any celebration of Christmas or of any other religious observances in schools or on any public property even if paid for by private funding. The ACLU calls for the removing of the words "Under God" from the Pledge of Allegiance. The ACLU supports abolishing military chaplains. The ACLU urges removal of all tax exemptions from churches as a clear and flagrant breech of the first amendment. The ACLU opposes any law that prohibits gambling, suicide, illicit sex or drug use. Sen. Hofman listed other points and stated that this flagrantly defies the morays of American society. It's against everything that American people stand for. With friends like these, who needs any enemies?

Sen. Hofman stated that they as legislators have the responsibility of passing laws giving the people and law enforcement agencies the tools that they need to make Montana a clean, a pure, and a safe place to work, to play and to live in peace. He commented that he hoped and prayed that the committee would pass this legislation.

ADJOURNMENT

Adjournment At: 10:00 a.m.

REP. DAVE BROWN, Chairman

DB/je

6508.min

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date March 21, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER			X
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

Montana Catholic Conference

EXHIBIT 1
DATE 3-21-89
HB SB'S 263, 307, 342

March 21, 1989

CHAIRMAN BROWN AND THE HOUSE JUDICIARY COMMITTEE

I am John Ortwein, representing the Montana Catholic Conference.

The current widespread availability of blatantly offensive pornographic materials confronts our society with many problems.

Pornography is loveless and glorifies sex for its own sake. It fosters an erosion of reverence for life and love and reduces sexual intimacy to an exercise of self-gratification, power, or pleasure and pain. It is therefore, an attack on every person's human dignity. It is an evil that desensitizes and degrades all who use it, insults and victimizes all women, promotes sexual violence, and violates the minds and bodies of innocent children.

The past decade has been a period of explosive growth for the pornography industry. Because of this unrestricted growth, it has spread from the larger cities into suburban areas and smaller towns. It has undermined our traditional family values and made a mockery of the sanctity of marriage.

The Montana Catholic Conference supports Senate bills 263, 307, and 342 because the consistent Catholic tradition considers sexuality as a gift from God and because of our insistence on the intrinsic dignity of every person. We urge your support on these three bills.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

EXHIBIT 2
DATE 3-21-89
HB SB'S 263, 307, 342

MEMBERS OF MONTANA RELIGIOUS ALLIANCE FOR DECENCY

Assemblies of God
Baptist, American
Baptist, General Conferance
Catholic Conference
Christian Reformed
Churches of Christ
Church of God, Anderson, IN.
Church of God, Cleveland, TN.
Church of Jesus Christ of Latter Day Saints
Evangelical of North America
Evangelical Covenant
Four Square
Independent Fundamental
Jewish
Lutheran, (ELCA)
Lutheran, (LC-MS)
Church of the Nazarene
Pentecostal Church of God
Presbyterian Orthodox
Unification Church

Representatives of these churches have signed the attached communique and strongly urge your support of bills #263 #307 and #342.

Rev. Steven C. Carlson
acting Cchairperson, MRAD

EXHIBIT 6
DATE 3-21-89
HB/SB's 263, 307, 342

MONTANA RELIGIOUS ALLIANCE FOR DECENCY
COMMUNIQUE ON PORNOGRAPHY AND OBSCENITY

As religious leaders of the state of Montana, representing a broad spectrum of the religious community, we have met on this day December 10, 1988, in Helena, Montana to discuss the problem of obscenity and pornography and to issue a statement of agreement concerning possible solutions. We understand that the meeting today is one step in an ongoing process to further seek cooperation among religious bodies on this vital topic.

1. We believe that obscenity is harmful to the men, women and children of our society. (see Attorney General's Report)

2. We believe that as religious leaders we have a responsibility to help people understand sex is a beautiful gift of God's love. Sex is part of God's design giving sanctity and dignity to human relationships.

3. We believe obscenity (hard-core) and pornography (soft-core) are harmful in that they degrade the dignity of the human being created in the image and likeness of God.

4. We believe that as religious leaders we have a responsibility to help people understand the degrading nature of pornography.

5. We believe in the passing and enforcement of strong obscenity laws as have been defined by the U.S. Supreme Court:

   (1) The material describes sexual conduct in an obviously offensive way.
   (2) The material goes against contemporary community standards appealing to a morbid interest in sex.
   (3) The material lacks serious literary, artistic, political, or scientific value.

6. We do not advocate censorship of materials which have been clearly outlined by the Supreme Court as being under First Amendment protection.

7. We believe that laws should be passed and enforced that will place soft-core pornography out of the reach of children (commonly referred to as Harmful to Minors laws).

8. We believe that laws should be passed and enforced to stop commercial nudity and/or commercial live sex shows which we believe to be harmful to our society.

9. We encourage people as responsible American citizens to study the issue of pornography and to take the appropriate actions to maintain moral communities. (see the Attorney General's Report, p. 330)

10. We hereby subscribe to this communique as responsible individuals and religious leaders with the understanding that we do not necessarily speak for our entire constituencies.

SIGNATURE	ORGANIZATION REPRESENTED

EXHIBIT 3
DATE 3-21-89
HB SB'S 263, 307, 342

PORNOGRAPHY EFFECTS: EMPIRICAL EVIDENCE

By: Victor B. Cline, Ph D.
Dept. of Psychology
University of Utah, Salt Lake City, Utah. 84112

R-4

DEFINING PORNOGRAPHY

To ascertain if obscenity or pornography have the power to corrupt, injure, or inspire harmful behavior--we first need to define it. The word pornography is a "lay term" used in common parlance to usually mean "graphic and explicit depictions of sexual activity." Whereas obscenity is a legal term which comes to us from the U.S. Supreme Court's most recent definition (rendered in 1973, Miller vs. California). Here for something to be found legally obscene a jury (representing a cross section of the community) must find three things wrong with it:

(1) It must appeal to a prurient (sick, morbid, shameful, or lustful) interest in sex.

(2) It must be patently offensive (e.g. go beyond contemporary community standards with regards to depictions of sexual content or activity).

(3) Taken as a whole it must lack serious literary, artistic, political or scientific value.

The material has to fail all three tests before it can be found obscene in the eyes of the law and any penalties proscribed.

This means that something could be regarded as "pornographic" but still not be legally obscene--such as such as explicit sex films used to teach medical students about human sexuality or even a film or book with high artistic and/or literary value which had explicit sexual content.

ITS EDUCATIVE IMPACT

There is a myth or belief held by many Americans that pornography (or obscenity)--while it may be vulgar and tasteless--is still essentially harmless and has no real effect on the viewer and can certainly do no real harm.

However--for someone to suggest that pornography cannot have an effect on you is to deny not only its unique educative impact but to deny the whole notion of the educative process itself including all learning everywhere. If you say that a pornographic book can't effect you, then you also have to say that Karl Marx's Das Kapital or the Bible or the Koran also have had no effects on their readers. And thats nonsense. But, of course, books and other media do have an effect on their consumers. Consider a single book by Ralph Nader, Unsafe at any Speed, it set in motion a whole series of events leading to legislation which is now undoubtedly saving thousands of lives yearly on the highway and which put General Motor's Corvair out of business. Shrewd businessmen don't spend

over ten billion a year on television advertising if it didn't deodorant, Chevies, and Pampers.

CLINICS USE SEX FILMS TO CHANGE BEHAVIOR & ATTITUDES

Many hundreds of sex counseling clinics in the U.S. daily make use of explicit sexual pictures, films, books, and videos to change couples' sexual behavior, belief and attitudes. Other centers use graphic sex films to recondition the sexual behavior of sex offenders. However these are as carefully selected and prescribed as a physician would in writing prescription for a particular drug to treat a specific illness or infection. No responsible doctor would ever send a patient to a pharmacy and say, "Take anything or everything available." And no responsible sex therapist would ever say to a patient who had a specific focused sexual problem, "Go down to the adult bookstore and help yourself to whatever you want."

You cannot logically argue that the kind of change which goes on in a sex counseling clinic can go only one way (just make people healthy). It can go the other way too. Some of it can harm people by suggesting through modeling and imitative learning--inappropriate, unhealthy, or even illegal kinds of sexual activity--which some suggestible viewers may later act out. We have a great deal of information gained from treating sex offenders suggesting that pornography is often used as a facilitator in acquiring a deviation. (See: The Sexual Addiction, by Patrick Carnes, Compcare Publications, Minneapolis, 1984).

WHY SEX EDUCATION IN THE SCHOOLS?

Or consider also the spread of sex education instruction throughout schools in the U.S. The assumption is that you can change attitudes and behavior about sex through some form of teaching and instruction. If you assume that this is so then you have to admit to the possibility that films, magazines and books which model rape and the dehumanization of famales in sexual scenes are another powerful form of sex education. And thus educate too. Anyone who has seen much pornography knows that most of it is made by men for male consumption, is extremely sexist, gives a great deal of misinformation about human sexuality--especially about female sexual nature and response and that most of it is devoid of love, relationship, responsiblity, mentions nothing about the risks of sexually transmitted diseases, and for the most part dehumanizes both males and females. It in a sense does dirt on sex. It falsely represents it. And much of it is very hostile to the female participants who are often denigrated and humiliated.

WHY SOME CLAIM "NO EFFECTS"

Many of the educated commentators or even "experts" that I know who suggest that pornography has no effects--really don't believe what they are saying or they will reluctantly admit to the possibility of harm from just "violent pornography." In many cases they are pretending "not to know" because of their concern about censorship, and loss of First Amendment rights. Thus for for some of them the issue is really political. It also has to do with their personal values--and much less with what the objective truth is. They fear the tyranny of a moralist

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minority who might take away their rights to view pornography, then later maybe, free speech and expression.

PORNOGRAPHY EFFECTS: DATA FROM CLINICAL CASE STUDIES

There are a variety of evidences suggesting risk and the possibility of harm from being immersed in repeated exposure to pornography. These data come from: (a) empirical laboratory type studies, (b) field studies, and (c) clinical case history data from the offices of clergy and clinics of professional healthcare personnel treating individuals with sexual dysfunctions.

I am a clinical psychologist. I have treated over many years approximately 240 sex offenders or individuals (95% male) with sexual illnesses. These include rapists, child molesters, exhibitionists, voyeurs, sado-masochists, fetishists, plus other kinds of compulsive sexual acting out. With very few exceptions porngraphy has been a contributor in the acquisition of their deviation. However regardless of what the specific nature of their deviation was I found a near universal four factor syndrome common to nearly all of my clients with almost no exceptions.

The first thing that happened was an addiction effect. They got hooked. Once involved in obscene materials they kept coming back for more and still more. The material seemed to provide a very powerful sexual stimulant or aphrodisiac effect followed by sexual release most often through masturbation. The pornography provided very exciting and powerful fantasies which they frequently recalled to mind and elaborated on in their fantasies. One of my patients, even for a thousand dollars, could not stay away from pornography for 90 days--he was so deeply addicted. And in his case he desperately wanted to get out of his dependency on this material because of its negative effect on his marriage.

Secondly there was an escalation effect. With the passage of time they required more explicit, rougher, more deviant and "kinky" kinds of sexual material to get their "highs" and "sexual turn ons." It was reminiscent of those individuals afflicted with drug addictions. In time there is nearly always an increasing need for more of the stimulant to get the same effect as one got initially. If their wives or girl friends were involved with them they pushed their partners, over time, into doing increasingly bizarre and deviant sexual activities. In many cases this resulted in a rupture in the relationship when the woman refused to go further--often leading to much conflict, separation or divorce.

Being married or being in relationship with a willing sexual partner didn't solve their problem. Their addiction and escalation was mainly to the powerful sexual imagery in their minds. They often preferred this accompanied by masturbation--to sexual intercourse itself. This nearly always diminished their capacity to love and express affection to their partner. The fantasy was all-powerful...much to the chagrin and disappointment of their partner. Their sex drive had been diverted to a degree away from a their spouse. And the spouse could tell and often felt very lonely and rejected.

The third thing that happened was desensitization. With material (in

books, magazines, or film/videos) that were originally perceived as shocking, taboo breaking, repulsive or immoral--though still sexually arousing--in time came to be seen as acceptable and commonplace. The sexual activity they witnessed (no matter how gross or deviant) in time became legitimized. There was increasingly a sense that "everybody do it" and this gave them permission to also do it--even though, possibly illegal and contrary to their previous moral beliefs and standards.

The fourth thing that occurred was an increasing tendency to ACT SEXUALLY the behaviors viewed in the pornography they had been repeatedly exposed to--including compulsive promiscuity, exhibitionism, group sex, voyeurism, frequenting message parlors (when this had not been their pattern before), having sex with minor children, rape, inflicting pain themselves or partner during sex, etc. This behavior quickly grew into sexual addiction which they found themselves hooked on and unable to change or reverse--no matter what the consequences in their life.

IF PORNOGRAPHY IS IN THE HOME CHILDREN FIND IT

I also found a spill-over effect where pornography used by adults very frequently gets into the hands of children living in the home or neighborhood where adults are using it.

Example: A mother brought to my office her pregnant 13 year old daughter. The girl and her 14 year old boyfriend had discovered the father's secret cache of pornography and proceeded to engage in a variety of sexual acts stimulated by and in direct imitation of these materials which they reviewed and used over many months.

Example: From my private practice. Two brothers 9 and 10 stumbled across their parents X-rated video tapes and secretly played them for many months while their dad and mom were at work. They later forced two younger children in the home and a neighbor boy to view them, stripped them naked, forced dirt, sticks and small rocks into their rectums, forced them to engage in oral sex, did anal sex on them and threatened to shoot them with a BB gun if they told. This abuse continued for several years before finally being discovered when the younger abused children reported it.

Example: Reported to the U.S. Attorney General's Pornography Commission, page 785 of their Final Report: "My daughters also had an experience with an eleven year old neighbor boy.... porno pictures what he had were shown to the girls and to the other children on the block. Later that day, he invited my daughters into his house to play video games, but then tried to imitate the sex acts in the photos with my eleven year old daughter as his partner; my other daughter witnessed the incident."

Example: A mothers testimony to the 1986 U.S. Attorney General's Commission on Pornography, p. 797 of that Final Report. "My son was murdered on August 6, 1981, by the greed and avarice of the publishers of Hustler magazine. My son read the article "Orgasm of Death," set up the sexual experiment depicted therein, followed the explicit instructions of the article, and ended up dead. He would still be alive today were he not enticed and incited into this action by Hustler magazine's "How to do" August 1981 article, an article which was found at his feet and which

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directly caused his death."

EARLIER EMPIRICAL STUDIES ON PORNO EFFECTS

If we look at field and empirical studies on pornography's effects we might cite evidence going back to the 1970 Presidential Commission on Obscenity and Pornography Report whose technical reports I carefully reviewed and later wrote a book about (e.g. Where Do You Draw the Line).

In a sophisticated commission financed study of seven different populations of subjects comprising 365 people Drs. Davis and Braucht (reported in Vol VII, of the Commission's Technical Reports, US Govt. Printing Office, 1971) assessed the relationship between exposure to pornography and moral character, deviance in the home and neighborhood, and sex behavior. In their study, impressive in its rigorous methodology and statistical treatment they concluded that "One finds exposure to pornography is the strongest predictor of sexual deviance among the early age of exposure subjects." They also found that there was a "positive relationship between sexual deviance and exposure to pornography at all ages of exposure levels: In the early age of exposure (to pornography) subgroup, the amount of exposure was significantly correlated with a willingness to engage in group sexual relations, frequency of homosexual intercourse, and 'serious' sexual deviance; and there were trends for the number of both high school heterosexual partners and total homosexual partners to be positively related to (pornographic) exposure.

Correlation alone never demonstrates a causal relationship--however, it does permit a reasonable hypothesis. Because the researchers had partialed out the contribution of other key variables in this study, the possibility of causation (of harm via pornography exposure) was highly suggested.

NATIONAL POLL OF MENTAL HEALTH WORKERS

In a national poll of mental health professionals by Drs. M. Lipkin and D.E. Carns cited (1970, Winter) in the University of Chicago Division of Biological Sciences and the Pritzker School of Medicine reports--254 psychotherapists reported in their clinical practices cases in which pornography was found to be an instigator or contributor to a sex crime, personality disturbance or antisocial act; and another 324 professionals suspected such relationships in cases with which they had worked. And while many other professionals had not found such relationships in their private practice experience this data cannot be dismissed as irrelevant or not suggestive of the potential for negative consequences as a result of exposure to pornography.

CONDITIONING INTO DEVIANCY WITH PORNOGRAPHY: THE RACHMAN STUDIES

Other powerful cause-effect data come from the conditioning laboratories of investigators such as Dr. Stanley Rachman (see, "Experimentally induced 'sexual festishism': A replication and development." Psychological Record, 18:25, 1968) who demonstrated that, with the use of highly erotic pictures, sexual deviations could be created in individuals. He was actually able to condition (repeatedly) 100% of

his male subjects into sex deviancy. Additionally, the work of McGuire (see, "Sexual deviations as Conditioned Behavior: A Hypothesis," Behavi Research Therapy, 2:185, 1965) suggests that exposure to special sexual experiences (which could include witnessing pornography) then masturbati to the fantasy of this exposure can sometimes later lead to participatio in deviant sexual acts. The massive literature on therapy for sex deviates suggest that their sexual orientation can frequently be changed (reconditioned) with the use of explicit sex films as a therapeutic tool. If these data are valid then one must also allow for the possibility tha deliberate or accidental exposure to either pornography or deviant real life sex experiences can facilitate the conditioning of the individual into sexual aberrations.

ALL SEX DEVIATIONS ARE LEARNED BEHAVIOR

The best evidence to date suggests that all sexual deviations are learned. None are inherited. As McGuire explains it, as a man repeated masturbates to a vivid sexual fantasy (introduced by porn or maybe a real life experience) as his exclusive outlet, the pleasurable experiences endow the deviant fantasy (rape, molesting children, injuring one's partner while having sex, etc) with increasing erotic value. The orgasm experienced then provides the critical reinforcing event for the conditioning of the fantasy preceding or accompanying the act.

Other related studies by Evans ("Masturbatory fantasy & sexual deviation" in Behavioral Research & Therapy, 1968, 6:17) and Jackson ("A case of voyeurism treated by counter conditioning" in Behavior Research & Therapy, 1969, 7:133) support this thesis. They find that deviant masturbatory fantasy very significantly affected the habit strength of the subject's sexual deviation. McGuire indicates that any type of sexual deviation can be acquired in this way, that it may include several unrelated deviations in one individual and cannot be eliminated even by massive feelings of guilt. His paper cites many case histories to illustrate this type of conditioning.

MCGAUGH'S RESEARCH ON MEMORY

The work of psychologist James L. McGaugh at the University of California, Irvine needs mention here (see: "Preserving the presence of the past" in Feb 1983, American Psychologist, p. 161). His findings (ove simplifying somewhat) suggest that memories of experiences which occurred at times of emotional arousal (including sexual arousal) get locked into the brain by the chemical epineprine and are difficult to erase. This may partly explain pornography's addicting effects. Powerful sexually arousing memories of experiences from the past keep intruding themselves back on the mind's memory screen serving to stimulate and erotically arouse the viewer. If he masturbates to these fantasies he reinforces the linkage between sexual arousal and orgasm with the particular scene repeatedly rehearsed on his memory screen.

One might quickly see the risks involved with large numbers of males being exposed to the following film. This 8 mm motion picture film marketed out of Los Angeles depicts two Girl Scouts in their green uniforms selling cookies from door to door. At one residence they are invited in by a mature, sexually aggressive adult male, who proceeds to

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seduce them and subject them to a number of unusual and extremely explicit sexual acts, all shown in greatest detail. The girls are depicted as eagerly enjoying this sexual orgy. This film is what is usually termed hard-core pornography. This is the kind of pornographic stimulus/film that the male can play again and again for his sexual pleasure.

If the research of Rachman, McGuire, McGaugh and hundreds of other investigators in the area of human learning has any meaning at all, it would suggest that such a film could be dangerous and could potentially condition some male viewers to having reoccuring sexual fantasies (vividly imprinted into the brain) which they might repeatedly masturbate to then later be tempted to act out as sexual advances toward female minors--especially if they were in Girl Scout uniforms.

THE RESEARCH ON AGGRESSIVE PORNOGRAPHY (PORNO-VIOLENCE)

In recent years there has been a considerable body of research on aggressive pornography--a lot of it on hard R rated films. Many are also broadcast on cable TV. The typical film shows nude females or females in sexually arousing situations being raped, tortured, etc. The results of this research suggest the possibility of conditioning male viewers into associating sexual arousal with inflicting injury, rape, humiliation, or torture on females. Where these films are available on videotapes (which most are) these can be repeatedly viewed in the privacy of one's residence and masturbated to with the associated risks of negative or antisocial conditioning noted above.

Drs. Malamuth and Donnerstein noted in their 1984 book, Pornography and Sexual Aggression, "Certain forms of pornography (aggressive) can affect aggresssive attitudes toward women and can desensitize an individual's perception of rape. These attitudes and perceptions are furthermore directly related to actual aggressive behavior against women." or "These results suggest, again, that aggressive pornography does increase aggression against women." (p. 67 and 54)) In films where the woman is depicted as saying that she enjoys being raped they found an increased male acceptance of interpersonal violence against women and it tended to increase the male's acceptance of rape myths (such as believing that women enjoy rape). These author conclude that, "There can be relatively long-term anti-social effects of movies that portray sexual violence as having positive consequences.

The literature on aggressive pornography is rather overwhelming in its consistency in suggesting a variety of harms or possibility of antisocial outcomes from exposure to this material. This is not too unexpected after 40 years of research on film and TV violence coming to essentially the same conclusion (see Rubinstein, "Television & Behavior" in American Psychologist, 1983, 38, p. 820).

THE EFFECTS OF "NON VIOLENT" PORNOGRAPHY

The issue which has caught the attention lately of some behavioral scientists doing work in this area is whether its the violence or the sex thats doing most of the "harm" when it is fused together in so called aggressive pornography or porno-violence. Or some will say, "Just eliminate the violence--the sex is OK."

If we look at non-violent pornography totally devoid of violence we might well ask what about its effects. First we might indicate several examples of non-violent pornography which most therapists as well as common citizens would not regard as healthy models of sexual behavior: (1) Child pornography, (2) Incest type porn (e.g. mother seducing son, daughter seducing father, older brother seducing younger sister, etc.), (3) Sex with animals, (4) Group sex (e.g. 3 on 1, group mate swapping, etc.), (5) Sex which humiliates and denigrates women and their sex roles in man/woman relationships (but without overt violence), (6) Pornograph such as that involving the eager girl scout teenagers having 2 on 1 sex with the adult male, etc. Or (7) Obscene films which present a massive amount of misinformation or gross distortion about human sexuality. All of the above while lacking violence still have the potential of having negative effects on some viewers because of their modeling unhealthy sex role behavior or giving misinformation about human sexuality.

Additionally we do have some empirical research on the effects of straight adult non-violent porn by researchers Dolf Zillman and Jennings Bryant (see "Symposium on Media Violence and Pornography" Toronto, 1984, Media Action Group, and testimony given to U.S. Attorney Generals Commission on Pornography, Sept 1985, Houston). This research suggests that when experimental subjects are exposed to repeated presentations of hard core non-violent adult pornography over a six week period they (a) develop an increased callousness toward women, tend to (b) trivialize rape as a criminal offense, to some it was no longer a crime at all, (c) developed distorted perceptions about sexuality, (d) developed an appetite for more deviant, bizarre or violent types of pornography (escalation). Normal sex no longer seemed to "do the job," (e) led to a devaluation and depreciation of the importance of manogamy and a lack of confidence in marriage as either a viable or lasting institution and (f) came to view nonmonogamous relationships as normal and natural behavior.

In a further study reported to the Commission by Dr. Bryant 600 American males and females of junior high age and above were interviewed about their "out in real life involvement with pornography." He found that 91% of the males and 82% of the females admitted having been exposed to X-rated hard core pornography. Two thirds of the males and 40% of the females reported wanting to try out some of the sexual behaviors they had witnessed. And 25% of the males and 15% of the females admitted actually doing some of the things sexually they had seen in the pornography within a few days after exposure. This powerfully suggests the modeling effect or "imitative learning" effect that even non violent pornography has on human behavior. Additionally it was found that massive (e.g. 6 weeks) exposure to pornography was able to change the attitudes and feelings of their subjects in the direction of making sexual improprieties and transgressions seem less bad, the victims of such transgressions were perceived to suffer less and be less severely wronged. In other words they had become to some degree desensitized to the breaking of sexual tabus as a result of the pornography exposure.

As Dr. Jennings Bryant comments, "If the values which permeate the content of most hardcore pornography are examined, what is found is an almost total suspension of the sorts of moral judgment that have been espoused in the value systems of most civilized cultures. Forget trust.

Forget family. Forget commitment. Forget love. Forget marriage. Here, in this world of ultimate physical hedonism, anything goes. If we take seriously the social science research literature in areas such as social learning or cultivation effects, we should expect that the heavy consumer of hardcore pornography should acquire some of these values which are so markedly different from those of our mainstream society, especially if the consumer does not have a well developed value system of his or her own." And, of course, this is just what Dr. Bryant found in his research reported above.

DR. DIANA RUSSELL'S RESEARCH

In a 1982 study by Mills College (Calif.) sociologist Diana Russell ("Rape & Marriage") she found that the depiction and dissemination of the "rape myth" (in pornography) was a significant element in reducing inhibitions to the use of violence, habituating both males and females to the idea of rape and also accepting sexual aberrance as "normal" behavior. She found that once the seeds of deviant behavior were planted in the male fantasy, the men she studied were inclined to act out their fantasies. She found that both the fantasies that were acted out, as well as the mere conceptualization of these deviant fantasies as viable behaviors, led to considerable conflict and suffering on the part of both males and females, particularly in their sexual relationships with intimate partners.

SEX OFFENDERS USE OF PORNOGRAPHY

In another study by Dr. W. Marshall (see "Report on the Use of Pornography by Sexual Offenders", Federal Dept of Justice, Ottawa, Canada, 1983) almost half of the rapists that he studied used consenting sex pornography to arouse themselves preparatory to seeking out a victim to rape.

It should be emphasized that in these few brief pages it is not possible to review any more than a few representative studies and summarize some of the trends of current as well as past research on pornography's effects. But these should still be sufficient to give the reader a sense of the field and answer for him or herself the question of pornography's potential to change behavior and attitudes in adults as well as children.

PORNOGRAPHY'S IMPACT ON PSYCHOSEXUAL DEVELOPMENT

Other kinds of data which bear on these issues which should be noted come from physicians treating heavy consumers of pornography who see syndromes of arrest of development in their psychosexual growth. An example would be psychiatrist Harold Voth on the faculty of the Karl Menninger School of Psychiatry at Topeka, Kansas who sees pornography as typically depicting perverse sex, degradation through sex, transient meaningless sex, and violent sex--all of which is a reflection of incomplete and abnormal human development. As he notes, healthy mature people do not behave in these ways.

However, he notes, there are millions of people who appear manifestly healthy, but who also harbor substantial latent sickness which are

residues of developmental arrests or abnormal development which may find expression in sexual perversions. Thus viewing pornography, most of which depicts perverse behavior, activates the developmental sexual arrests which exist in millions of people. He sees these people as developing a kind of addiction for pornography thus receiving many exposures to it over time. These pornographic stimuli, therefore, promote regressive behavior rather than more mature behavior.

He sees such exposure as especially damaging to the young who are on the threshold of entering into an active sexual life. For them these vital processes should be guided toward greater maturity, not retrogressively toward perversion or transient meaningless sex. As Dr. Voth states it, "Society and individuals alike can only be harmed when we "legitimize" abnormal behavior."

He notes how some men become dissatisfied with their wives whom they believe to be inadequate (and vice versa) after viewing the exaggerated sexual prowess as depicted by the typical pornographic movie. He suggests that society has the responsibility to protect itself from itself, that is from the elements within society which harm it. He sees pornography as appealing to sexuality at its worst and since mature sexuality is so very essential to the heterosexual bond and to family life, steps should be taken to clearly identify pornography as unhealthy with many risks associated with its consumption.

DIAL-A-PORN

With the sponsorship of the U.S. Dept of Justice I was commission to conduct a pilot field study on the effects of Dial-A-Porn on children. In January of 1985 I interviewed a number of children and their parents who had become involved with this type of pornography.

With Dial-A-Porn when one makes a call it is usually answered by a very sexy seductive sounding female (actually a recording) who talks directly to the caller about how bad she wants to have sex with him now. She then with panting voice tells him all of the things she wants to do to him such as oral sex, vaginal sex, anal sex, etc etc. There may be a second young woman on the line and they may talk about having sex together as well as with the caller. They may mention having a sex marathon (dozens of partners) with all of the explicit details. In some cases bondage is part of the scenario (having sex while gagged, handcuffed and leashed at the neck--suggesting that sex is better if it "hurts so well--don't stop." Sex with animals is also included as well as group sex (3,4, or 5 men on one girl), lesbianism, rape, inviting a married male to have sex with the "baby sitter," a school teacher having sex with her students, inviting the caller to urinate in the woman's face, degrading the woman as a slut and trash while having sex with her, inviting beatings, torture, and general physical abuse as part of the sexual activity.

The messages keep changing every hour or so and new phone numbers are given out in order to encourage continuing call backs.

Any youngster of any age can tap into these porno lines and get these messages from any place in the country. All they need is a phone number

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to call. And these numbers are very easy to come by (on the playground of nearly every school in America). If parents put a "block" on their phone. to prevent these calls--the children merely use another phone.

With every one of the chldren we studied we found an "addiction effect." In every case without exception the children (girls as well as boys) became hooked on this sex by phone and kept going back for more and still more. They did not cease until found out. None of them. In some cases more than 300 long distance calls were made by particular children. Disclosure usually occurred when the parents received an enormous phone bill. This alerted them that something was amiss. And only after investigation (often having to call the number which was printed on the phone bill) did the parents becomed aware of what their children were calling and listening to. There was always a major confrontation. The children were usually made to pay the long distance phone costs as well as given a variety of chastisements, lectures, and/or punishments.

Where both parents worked or where there was a single parent in the home working this meant that they had to leave behind "latch key children" who were not monitored or supervised for a number of hours during the day. This created a very difficult problem in controlling phone use. In the case of one one-parent family the young son still continues to make Dial-A-Porn calls and the distraught mother has found no way to get him to stop. Threats, physical abuse, nothing works.

I found that nearly all of the children had clear memories of a great deal of the content of the calls they heard. I also found that almost without exception the children felt guilty, embarrassed, and ashamed about their involvement with Dial-A-Porn. In nearly all cases there were some problems and tensions generated in the parent-child and family relationships because of their making these calls.

I have also interviewed some children where as a result of their hearing these kinds of Dial-A-Porn messages they engaged in sexual assaults on other children. One 12 year old boy in Hayward, California listened to Dial-A-Porn for nearly 2 hours between church meetings one Sunday afternoon in the church. Some time later he sexually assaulted a 4 year old girl in his mother's Day Care Center. He had never been exposed to pornography before, was sexually chaste, and not a behavior problem in the home. He had never heard or knew of oral sex before listening to Dial-A-Porn. And this was how he assaulted the girl, forcing oral sex on her in direct imitation of what he had heard on the phone. I later interviewed a number of children in Michigan where similar sexual assaults occurred, males in their early teens "raping" younger females as a result of listening to Dial-A-Porn. All of these children might be considered victims.

CLINICAL CASE STUDIES

Another kind of evidence on negative effects comes from the private practice of psychotherapists, counselors, and ministers. Here we come up face to face with real people who are in some kind of deep trouble or pain. These are not dull statistics involving means and standard deviations or correlation coefficients. I'll cite several as examples.

The 46 year old deputy mayor of one of America's largest cities one afternoon a few years ago attended a porn-theatre. While watching the s film he became so turned on that he started to sexually assault or molest a patron setting next to him. The individual turned out to be an undercover city vice-squad officer. The deputy mayor was arrested, booke and found guilty in a subsequent trial. This distinguished public servant left office shamed and humiliated--his career in shambles.

A 36 year old married male, college educated, a professional man, very successful financially, had an addiction to pornography, masturbation, and frequenting massage parlor where he had paid sex. He had an excellent marriage, four children and was very active in his chur where he assumed important positions of responsibility. While he felt guilty about his engagement in illicit sex which was contrary to the teachings of his church and had the potential of seriously disturbing hi marriage if found out--he frequently and compulsively continued to do th which at a rational level he did not want to do. His problem came to light when he infected his wife with a venereal disease. This created many serious and disturbing consequences in his life.

A 30 year old single male, religiously active and very committed to his faith had a history of pornography addiction. He was too shy and backward to ask adult females on dates. But he developed relationships with his 4 and 7 year old nieces and their girlfriends which culminated in his repeatedly sexually molesting them. The modeling of explicit sexual activity in the pornography which he consumed helped fuel his sexual interest in these children. Because of his guilt over what he was doing he eventually sought professional help. However his state had a "disclosure law" which required that he be reported to state officials fo his history of sexually abusing children. Because of his cooperative attitude and the fact that he sought treatment on his own he was placed on probation, received long term psychotherapy and is now living a normal life.

While this kind of evidence is unlike the neat empirical laboratory study involving mainly college students it still is highly valid, relevant, and throws additional light on the question of harm.

THE MICHIGAN STATE POLICE STUDY

Still another type of evidence comes from a study conductd by Darrell Pope with the Michigan State Police who found that of 38,000 cases of sexual assault on file in Michigan, 41% involved pornography just prior t the act or during the act. (see Paducah Sun-Democrat, "New weapon against obscenity" 3 June 1983).

THE GARY BISHOP CASE

An example of the above comes from Gary Bishop, convicted homosexual pedophile who murdered five young boys in Salt Lake City, Utah in order t conceal his sexual abuse of them who wrote in a letter after his conviction, "Pornography was a determining factor in my downfall. Someh I became sexually attracted to young boys and I would fantasize them naked. Certain bookstores offered sex education, photographic or art

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books which occasionally contained pictures of nude boys. I purchased such books and used them to enhance my masturbatory fantasies. But it wasn't enough. I desired more sexually arousing pictures so I enticed boys into letting me take pictures of them naked. From adult magazines I also located addresses of foreign companies specializing in "kiddie porn" and spent hundreds of dollars on these magazines and films. Such materials would temporarily satisfy my cravings but soon I would need pictures that were more explicit and revealing. Some of the material I received was shocking and disgusting at first, but it shortly became commonplace and acceptable. As I continued to digress further into my perverted behavior, more stimulation was necessary to maintain the same level of excitment. Finding and procuring sexually arousing materials became an obsession. For me, seeing pornography was like lighting a fuse on a stick of dynamite. I became stimulated and had to gratify my urges or explode--all boys became mere sexual objects. My conscience was desensitized and my sexual appetite entirely controlled my actions." He then goes on to tell how he sexually abused then killed his boy victims to keep them silent.

THE FEMINIST POSITION ON PORNOGRAPHY

In reviewing the evidence on the effects of pornography brief mention should be made of the feminist position. Their general view is that lots of scientific studies proving or not proving harm is irrelevant and unnecessary. Pornography on its face is abusive and denigrating especially to women. You don't have to do research to prove that. Sociologist Diana Russell states (in her privately published paper, "Pornography, A Feminist Perspective" Berkeley, 1977), "Pornography is vicious, anti-woman propaganda. It tells lies about us. It degrades women. Pornography is not made to educate but to sell, and for the most part, what sells is a bunch of lies about sex and women. Women are portrayed as enjoying being raped, spanked or beaten, tied up, mutilated, enslaved, or they accept it as their lot as women to be victims of such experiences. In the less sadistic films women are portrayed as turned on and sexually satisfied by doing anything and everything men order them to do and what this involves is for the most part totally contrary to what we know about female sexuality i.e. it is almost totally penis-oriented, often devoid of foreplay, tenderness, or caring, to say nothing of love and romance.

Susan Brownmiller sees much women hatred in pornography, suggesting in her book, Against Our Will, "Pornography, like rape, is a male invention, designed to dehumanize women, to reduce the female to an object of sexual access. The gut distaste that a majority of women feel when we look at pornography comes from the gut knowledge that we and our bodies are being stripped, exposed and contorted for the purpose of ridicule, to bolster that 'masculine esteem' which gets its kicks and sense of power from viewing females as anonymous, panting playthings, adult toys, dehumanized objects to be used, abused, broken and discarded.

The feminists may be right. Insisting on proof of harm may be really an irrelevant issue. We don't set up presidential commissions to decide whether prostitution or houses of prostitution are harmful to the public interest. Each community makes its own decision and handles that in its own way without a lot of fuss. And similarly with false advertising,

perjury, conspiracy, or whether cigarettes can be advertised on TV. These are all issues which in one way or another involve public morality and prohibitions against them have evolved out of English common law as well as common sense legislation using democratic procedures and processes.

IN CONCLUSION

At the present time even though reasonable and fair pornography control statutes exist in nearly every community in the nation as well as at the federal level, prosecution has been feeble or in most cases non-existant because of confusion over the harm issue as well as the concern by some that limiting or prohibiting pornography would lead to censorship of other materials. In my view, and I work with people daily who have major pathology because of their invovlement with pornography--some limits need to be set. Laws need to be enforced or taken off the books. In a sense our "drinking water has been contaminated" and we are getting a lot of casulties--both children and adults. And very few people are doing or saying anything about it. Our people and our country are too precious for us to look the other way, ignore it, or pretend not to know whats happening.

EXHIBIT 1
DATE 3-21-89
H/SB's 263, 307, 342

Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

March 21, 1989

CHAIRMAN BROWN AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE:

My name is Mignon Waterman and I represent the Montana Association of Churches.

The Montana Association of Churches opposes any depiction of human beings that cheapens, degrades or exploits sexual relationships between men and women or condones child pornography. Therefore we support the concept of the three bills before your committee today SB263, SB307 and SB342.

However, the Montana Association of Churches strongly supports freedom of speech and we do not wish to abridge first amendment rights.

We hope that supporters and opponents of these bills would work together ~~to amend them~~ to satisfy the concerns of Montanans who wish to prevent the sexual exploitation of women and children. Surely we can find a common ground that condones neither censorship nor pornography and I would urge you to seek that compromise.

WORKING TOGETHER:

erican Baptist Churches of the Northwest

Christian Churches of Montana (Disciples of Christ)

Episcopal Church Diocese of Montana

Evangelical Lutheran Church in America Montana Synod

byterian Church (U. S. A.) Glacier Presbytery

byterian Church (U. S. A.) ellowstone Presbytery

oman Catholic Diocese of Great Falls - Billings

oman Catholic Diocese of Helena

United Church of Christ Mt.-N. Wyo. Cont.

United Methodist Church llowstone Conference

EXHIBIT 5
DATE 3-21-89
HB SBS 263, 307, 342

Fortine, MT
Feb. 25, 1989

Member of the House of Representatives
Capitol Station
Helena, MT 59620

Dear Representative,

It is futile to lament escalating crime rates, increasingly more youthful offenders, and overcrowded prison facilities when we permit a crime-spawning plague of epidemic proportions to saturate our neighborhoods and to permit organized crime to reap billions of dollars per year commercializing on the degradation and misery of innocent women and children.

Please be mindful of these facts when you consider Senate Bills 307. 342, and 263:

(1) MONTANA IN PASSING THESE LAWS IS NOT BREAKING NEW GROUND: Forty-four states have passed similar laws. Our failure to do so, will place Montana at risk by sending a signal to organized crime that here is a climate where the activities which would be made illegal in these bills can flourish unchallenged by our unsophisticated laws. Last year Lincoln County voters passed ordinances similar to these.

(2) THESE BILLS DO NOT DEFINE OBSCENITY: That has already been done by the U.S. Supreme Court and the definition has withstood all challenges since 1973: Miller vs. California

(3) MONTANA PROSECUTORS AND LAW ENFORCEMENT PERSONNEL NEED THESE LAWS TO HELP DO THEIR JOB OF PROTECTING YOU AND YOUR FAMILIES MORE EFFECTIVELY:

(4) ALL PORNOGRAPHY IS A CHILDRENS ISSUE:
Children 12-17 are the biggest consumers of porography, and studies indicate that 7 out of 10 pieces of pornography end up in kids' hands. A well known poll showed that of boys who had watched X-rated videos, 2/3 wished to enact what they had viewed and 31% had already tried!

(5) PORNOGRAPHY IS ADDICTIVE: The Bundy interview graphically bears out what researchers and psychologists have been telling us. A study funded by the U.S. Department of Justice

EXHIBIT 5
DATE 3-21-89
H/S SB'S 263, 307, 342

conducted by Dr. Victor Klein of Salt Lake City, showed that of the case studies done, 300 were Bundy type stories-young men who started reading softcore, graduated to hardcore and eventually became threats to society when their fantasies resulted in criminally aggressive sexual behavior.

(6) RAPE RATES PARALLEL MAGAZINE SALES: Correlational studies indicate that rape rates closely parallel the sale of pornographic magazines--no state deviated more than 3-4% When Oklahoma City passed strong laws, rape rates went down 22.6 % while the rate increased 8 % in the rest of the state during the same period. They have 133 fewer rapes cases per year because of obscenity prosecutions.

(7) PORNOGRAPHY IS BEING USED AS A WEAPON AGAINST CHILDREN: Studies show that 95% of pedophiles use pornography to lower the inhibitions and to "condition" the children they set out to sexually abuse.

(8) CHILD PORNOGRAPHY CANNOT BE PRODUCED WITHOUT SEXUALLY MOLESTING AND ABUSING CHILDREN! There is strong new federal law against the sale of child pornogaphy and U.S. Attorney, Pete Dunbar, has already prosecuted several in Montana.

(9) PORNOGRAPHY, ADULT BOOK STORES AND PEEP SHOWS THREATEN THE MENTAL AND PHYSICAL HEALTH OF SOCIETY: One need only hear of the gross practices at some of the above places in view of the rapid spread of AIDS to acknowledge that their continued operation proliferates serious health problems.

(10) IT HAS BEEN SAID THAT THE ONLY BUSINESS IN AMERICA WHICH IS NOT REGULATED IS PORNOGRAPHY: Not too surprising when confronted with the fact that organized crime distributes 85-95% of all pornographic materials.

I urge you to resist the efforts of the ACLU and others to amend these bills for the purpose of killing them or making them worthless. As oringinally drafted, these laws were tailored specifically for Montana by attorneys who have proved their expertise by successfully helping pass these protective statutes in other states-laws which have already been upheld as constitutional!

Thank you very much!

Aubyn Curtiss

Aubyn Curtiss
Member, House Judiciary Committee (6 yrs)
Int Comm. Re-districting & Criminal Appeals
Ad Hoc Committee on Criminal Justice

EXHIBIT 6
DATE 3-21-89
HB SB's 263, 342, 307

February 7, 1989

STATE JUDICIARY COMMITTEE
MONTANA STATE CAPITOL
HELENA, MONTANA 59601

Dear Senators;

I am a detective for the Lincoln County Sheriff's Department. As a detective, I have been dealing with sexual assault and abuse cases since 1980.

In 1988 it was reported that Lincoln County was number three (#3) in total number of reported sexual crimes for the state. Per capita, that made us #1.

I can personally tell you that in almost every case where I have entered the suspect's residence, pornography was around in one form or another.

In speaking with Joanne Serna, of our Mental Health Office, she related to me that the majority of her juvenile victims have told her that the suspect in their individual case was using pornography.

I had the opportunity to attend an FBI sex crimes profiling class in November of 1987. They showed several cases on sex crimes, and all involved pornography in some way. They are convinced, and assured us that porn is involved with these sex crimes.

After seeing these victims and suspects, along with porn year after year, I can assure you there is a direct connection. People read the stories, or see the porn movies, and believe what they see and read. Their one purpose in life will be to fulfill the fantasy that they have received from this material. I have seen this happen in Libby.

I have heard people say, "We are giving up our rights if we vote in an anti-pornography law". But, I ask you, wouldn't you give up your right to buy porn if it could possibly save one child from being a victim, or one more person from becoming a suspect?

I have also had people ask me, "Why do you want another law to enforce when you can't stop the problem?" Well, they may be right. The law may not stop porn worldwide, but it will help in the State of Montana. We have many laws; laws against theft, murder, and drugs. We will probably never stop these crimes, including drugs, but by making drugs illegal we can keep it out of some of our kids' hands. If we can do this then the law is worth the trouble. This includes the pornography laws.

EXHIBIT 6
DATE 3-21-89
H/S SB'S 263, 307, 342

February 7, 1989

There is a lot I could write about sex crimes and pornography, but I know you are busy. I wish I could have testified in person but could not make it due to commitments in court. I would like to help you to see, feel and understand about the victims we deal with. It is hard to understand unless you see it first-hand. But believe me when I say pornography is connected to these sex crimes, and I believe it is the fuel that feeds the fire.

I urge you to vote for and support the anti-porn laws.

Sincerely,

Don Bernall

Lt. Donald H. Bernall
Lincoln County Sheriff's Department

EXHIBIT 7
DATE 3-21-89
H/S SB'S 263, 307, 342

February 7, 1989

STATE JUDICIARY COMMITTEE
MONTANA STATE CAPITOL
HELENA, MONTANA 59601

Dear Senators;

I would like to talk to you about the Nude Dancing Law, which is before you.

In 1987 a group of nude dancers came to Libby, Montana, from out of state. I was asked to check on the situation to make sure it complied with city, county, and state laws.

After arriving, I found that our laws are so vague there was nothing I could do. While there, I observed three individuals I had previously dealt with on sexual crime investigations. This nude dance was being held in a bar, where everyone I saw was consuming alcohol. As I left that night, I fully expected to be called back to work on another sexual assault. I felt they were turning 150 to 200 sexually aroused men whose judgement was impaired by alcohol loose in our community.

I feel we have enough problems with sexual abuse and assaults, without arousing these people with nude dancers and alcohol. I believe anyone can see how someone who is already disposed towards a sexual crime can be excited to the point of fulfilling that crime by this type of activity.

Sincerely,

Don Bernall

Lt. Donald H. Bernall
Lincoln County Sheriff's Department

DATE 3-21-89
HB SB'S 263, 307, 342

SUSAN LOEHN
COUNTY ATTORNEY
SCOTT B. SPENCER
DEPUTY

LINCOLN COUNTY ATTORNEY
LIBBY, MONTANA 59923

COURTHOUSE
512 CALIFORNIA AVENUE
(406) 293-2717

March 16, 1989

House Judicial Committee
Capitol Station
Helena, Montana 59620

RE: Anti-Pornography Bills

Dear Committee Members:

As the County Attorney of Lincoln County, I was asked by the Board of County Commissioners to draft three anti-pornography ordinances. It is my understanding that these ordinances are very similar to the bills that are before you now. There are some who have proclaimed these ordinances as censorship. I think that if you carefully read these ordinances in their entirety and understand them in a legal sense, you will find that these bills are sensible legislation to outlaw material which is not protected by the First Amendment.

Under the bills as presented to you, publications such as Playboy and Hustler are not banned because these magazines usually contain some serious literary, artistic, political or scientific articles. We have had this ordinance in Lincoln County for almost one year. In that time not one book has been banned from the library; not one video tape has been taken out of circulation from a video store. What has happened is that the so-called "soft core porn" has been put in a place not accessible to curious juveniles. What has happened is that the stores in Lincoln County that were selling hard core pornography have modified their selection. Although the selection of magazines that remain are offensive to a certain percentage of people in Lincoln County, they remain because as the law is written it protects any material which has literary, artistic, political or scientific value. The hard core pornography was removed without having to bring charges against any store owners.

During the election when these ordinances were being discussed the threat of lawsuits and censorship were used as arguments against these ordinances. The reality of this situation shows that Lincoln County continues to exist as a community where First Amendment Rights are proudly upheld. We are also proud to say that it is a community where the voters of the county have let the sellers of hard core pornography know that they are not welcome.

You have an opportunity by the passage of these bills to take a stand against hard core pornography. This stand will not violate the First Amendment Rights of any one. The United States Supreme Court has ruled that hard core pornography is not

EXHIBIT 8
DATE 3-21-89
H/SBS 263,307,342

protected. Hard core pornography has no serious literary, artistic, political or scientific value.

I would urge you to support the anti-pornography bills before you.

Sincerely,

Susan Loehn
County Attorney

SL/cs

EXHIBIT 9
DATE 3-21-89
HB SB'S 263, 307, 348

United States Attorney
District of Montana

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

Post Office Box 1478
Billings, Montana 59103

406/657-610
FTS/585-610

October 7, 1987

Mrs. Larry Anderson
172 Pioneer Road
Libby, Montana 59923

Dear Mrs. Anderson:

Reference your excellent letter dated October 5, 1987, regarding pornography and its relationship to sexual abuse.

The best suggestion that I can make is contact and lobbying with the Montana legislative body to enact strong and legal anti-obscenity statutes. The best example of this is House Bill 1171, enacted in the State of North Carolina with an effective date of July 11, 1985. I have enclosed an article which describes some of the lobbying efforts in getting that legislation enacted.

Another suggestion I can make is to become active in those organizations opposed to obscenity. I would particularly recommend Citizens for Decency Through Law, Inc., 2331 West Royal Palm Road, Suite 105, Phoenix, Arizona, 85021, telephone number 602-995-2600.

Sincerely,

PETE DUNBAR
United States Attorney

PD:mah
Enc.

EXHIBIT 10
DATE 3-21-89
H/S SB's 263, 307, 342

State of Montana

Proclamation

WHEREAS, many studies, including that of the U.S. Attorney General's Commission on Pornography, have discovered a direct link between obscene materials and the incidents of child abuse and sexual assaults against men, women, and children; and

WHEREAS, Montana citizens are concerned about the increase in these crimes in Montana; and

WHEREAS, during the week of October 30 - November 6, 1988, parents, schools, churches and other organizations will seek to become more informed on the problems of pornography; and

WHEREAS, they will take appropriate action to let law enforcement, city councils, county commissions, and state legislators know of their desire for better laws and the enforcement of those laws.

NOW, THEREFORE, I, TED SCHWINDEN, Governor of the State of Montana, do hereby proclaim the week of October 30 - November 6, 1988, as

PORNOGRAPHY AWARENESS WEEK

in Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the GREAT SEAL OF THE STATE OF MONTANA to be affixed. DONE at the City of Helena, the Capital, this twenty-fourth day of October, in the year of our LORD, one thousand nine hundred and eighty-eight.

Ted Schwinden

TED SCHWINDEN
Governor of Montana

ATTEST:

Verner L. Bertelsen

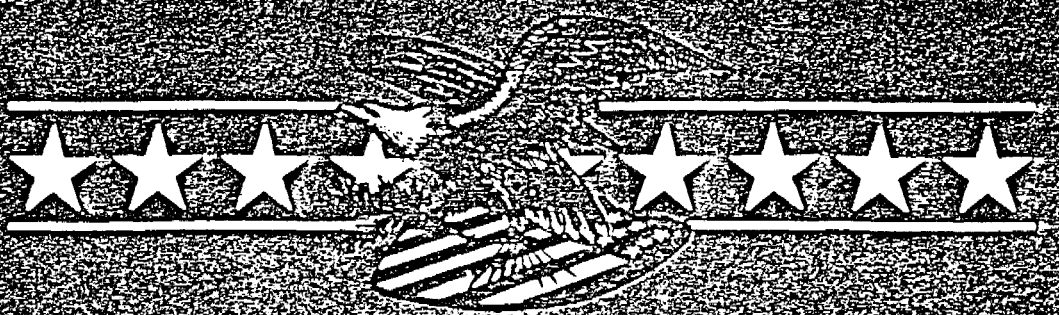
Verner L. Bertelsen
Secretary of State

EXHIBIT 11
DATE 3-21-89
HB/SB'S 263, 307, 342

"Americans should not ignore this Report . . . (which) is important reading whether or not one favors stricter community standards on the sale of sexually explicit material. The decision of citizens should be based on informed opinion, not hearsay."

—George Gallup, Jr.
President, Gallup Polls

Final Report of the Attorney General's Commission on PORNOGRAPHY



- IS PORNOGRAPHY HARMFUL TO YOU?
- DOES PORNOGRAPHY CAUSE CRIME?
- WHAT CAN BE DONE?
- WHY IS CENSORSHIP NOT RECOMMENDED?

Introduction by Michael J. McManus
Syndicated Columnist

Exhibit # 11
3/21/89

IV

[23–31] The dissenting Justices sound the alarm of repression. But, in our view, to equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment and its high purposes in the historic struggle for freedom. It is a "misuse of the great guarantees of free speech and free press . . . ." Breard v Alexandria, 341 US, at 645, 95 L Ed 1233, 35 ALR2d 335. The First Amendment protects works which, taken as a whole, have serious literary, artistic, political, or scientific value, regardless of whether the government or a majority of the people approve of the ideas these works represent. "The protection given speech and press was fashioned to assure unfettered interchange of *ideas* for the bringing about of

[413 US 35]

political and social changes desired by the people," Roth v United States, supra, at 484, 1 L Ed 2d 1498 (emphasis added). See Kois v Wisconsin, 408 US, at 230–232, 33 L Ed 2d 312; Thornhill v Alabama, 310 US, at 101–102, 83 L Ed 1093. But the public portrayal of hard core sexual conduct for its own sake, and for the ensuing commercial gain, is a different matter.[14]

There is no evidence, empirical or historical, that the stern 19th century American censorship of public distribution and display of material relating to sex, see Roth v United States, supra, at 482–485, 1 L Ed 2d 1498, in any way limited or affected expression of serious literary, artistic, political, or scientific ideas. On the contrary, it is beyond any question that the era following Thomas Jefferson to Theodore Roosevelt was an "extraordinarily vigorous period," not just in economics and politics, but in belles lettres and in "the outlying fields of social and political philosophies."[15]

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ment contends that he was subjected to "double jeopardy" because a Los Angeles County trial judge dismissed, before trial, a prior prosecution based on the same brochures, but apparently alleging exposures at a different time in a different setting. Appellant argues that once material has been found not to be obscene in one proceeding, the State is "collaterally estopped" from ever alleging it to be obscene in a different proceeding. It is not clear from the record that appellant properly raised this issue, better regarded as a question of procedural due process than a "double jeopardy" claim, in the state courts below. Appellant failed to address any portion of his brief on the merits to this issue, and appellee contends that the question was waived under California law because it was improperly pleaded at trial. Nor is it totally clear from the record before us what collateral effect the pretrial dismissal might have under state law. The dismissal was based, at least in part, on a failure of the prosecution to present affirmative evidence required by state law, evidence which was apparently presented in this case. Appellant's contention, therefore, is best left to the California courts for further consideration on remand. The issue is not, in any event, a proper subject for appeal. See Mishkin v New York, 383 US 502, 512–514, 16 L Ed 2d 56, 86 S Ct 958 (1966).

[31] 15. In the apt words of Mr. Chief Justice Warren, appellant in this case was "plainly engaged in the commercial exploitation of the morbid and shameful craving for materials with prurient effect. I believe that the State and Federal Governments can constitutionally punish such conduct. That is all that these cases present to us, and that is all we need to decide." Roth v United States, supra, at 496, 1 L Ed 2d 1498 (concurring opinion).

16. See 2 V. Parrington, Main Currents in American Thought ix et seq. (1930). As to the latter part of the 19th century, Parrington observed "A new age had come and other dreams—the age and the dreams of a middle-class sovereignty . . . .

Exhibit # 11
3/21/89

descriptions, or exhibitions of obscene conduct on commercial premises open to the adult public falls within a State's broad power to regulate commerce and protect the public

[413 US 69]

environment. The issue in this context goes beyond whether someone, or even the majority, considers the conduct depicted as "wrong" or "sinful." The States have the power to make a morally neutral judgment that public exhibition of obscene material, or commerce in such material, has a tendency to injure the community as a whole, to endanger the public safety, or to jeopardize, in Mr. Chief Justice Warren's words, the States' "right . . . to maintain a decent society." Jacobellis v Ohio, 378 US, at 199, 12 L Ed 2d 793 (dissenting opinion).

[8, 30] To summarize, we have today reaffirmed the basic holding of Roth v United States, supra, that obscene material has no protection under the First Amendment. See Miller v California, supra, and Kaplan v California, 413 US 115, 37 L Ed 2d 492, 93 S Ct 2680 (1973). We have directed our holdings, not at thoughts or speech, but at depiction and description of specifically defined sexual conduct that States may regulate within limits designed to prevent infringement of First Amendment rights. We have also reaffirmed the holdings of United States v Reidel, supra, and United States v Thirty-seven Photographs, supra, that commerce in obscene material is unprotected by any constitutional doctrine of privacy. United States v Orito, 413 US, at 141–143, 37 L Ed 2d at 517; United States v 12 200-Ft. Reels of Film, 413 US, at 126–129, 37 L Ed 2d at 505–506. In this case we hold that the States have a legitimate interest in regulating commerce in obscene material and in regulating exhibition of obscene material in places of public accommodation, including so-called "adult" theaters from which minors are excluded. In light of these holdings, nothing precludes the State of Georgia from the regulation of the allegedly obscene material exhibited in Paris Adult Theatre I or II, provided that the applicable Georgia law, as written or authoritatively interpreted by the Georgia courts, meets the First Amendment standards set forth in Miller v California, 413 US, at 23–25, 37 L Ed 2d at 431. The

[413 US 70]

judgment is

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claim such statutes violate the First Amendment or any other constitutional provision. See Davis v Beason, 133 US 333, 344–345, 33 L Ed 637, 10 S Ct 299 (1890). Consider also the language of this Court in McLaughlin v Florida, 379 US 184, 196, 13 L Ed 2d 222, 85 S Ct 283 (1964), as to adultery; Southern Surety Co. v Oklahoma, 241 US 582, 586, 60 L Ed 1187, 36 S Ct 692 (1916), as to fornication; Hoke v United States, 227 US 308, 320–322, 57 L Ed 523, 33 S Ct 281 (1913), and Caminetti v United States, 242 US 470, 484–487, 491–492, 61 L Ed 442, 37 S Ct 192 (1917), as to "white slavery"; Murphy v California, 225 US 623, 629, 56 L Ed 1229, 32 S Ct 697 (1912), as to billiard halls; and the Lottery Case, 188 US 321, 355–366, 47 L Ed 492, 23 S Ct 321 (1903), as to gambling. See also the summary of state statutes prohibiting bear baiting, cockfighting, and other brutalizing animal "sports," in Stevens, Fighting and Baiting, in Animals and Their Legal Rights 112–127 (Leavitt ed 1970). As Professor Irving Kristol has observed: "Bear-baiting and cockfighting are prohibited only in part out of compassion for the suffering animals; the main reason they were abolished was because it was felt that they debased and brutalized the citizenry who flocked to witness such spectacles." On the Democratic Idea in America 33 (1972).

Exhibit # 11
3/21/89

U.S. SUPREME COURT

Nude Dancing

[452 US 714]

NEW YORK STATE LIQUOR AUTHORITY

v

DENNIS BELLANCA, etc., et al.

452 US 714, 69 L Ed 2d 357, 101 S Ct 2599

[No. 80-813]

Decided June 22, 1981.

Decision: New York statute banning nude dancing in establishments licensed by state to serve liquor, held within authority of state to ban liquor sales under Twenty-first Amendment.

SUMMARY

The owners of several nightclubs, bars, and restaurants, which had for a number of years offered topless dancing, brought a declaratory judgment action in a New York state court, alleging that a New York statute prohibiting nude dancing in establishments licensed by the state to sell liquor for on-premises consumption, violation of which might cause an establishment to lose its liquor license, violated the First Amendment insofar as it prohibited all topless dancing on all licensed premises. The New York Supreme Court declared the statute unconstitutional, and the Court of Appeals of New York affirmed, reasoning that topless dancing was a form of protected expression under the First Amendment and that the state had not demonstrated a need for prohibiting licensees from presenting nonobscene topless dancing performances to willing customers.

Granting certiorari, the United States Supreme Court reversed. In a per curiam opinion expressing the view of BURGER, Ch. J., and STEWART, WHITE, BLACKMUN, POWELL, and REHNQUIST, JJ., it was held that the New York statute did not violate the First Amendment, since the statute was within the state's power conferred by the Twenty-first Amendment to regulate the sale of liquor within its boundaries, the state's power to ban the sale of alcoholic beverages entirely included the lesser power to ban the sale of liquor on premises where topless dancing occurred, and whatever artistic or communicative value that might attach to topless dancing was overcome by the state's exercise of its broad powers arising under the Twenty-first Amendment.

Exhibit # 11
3/21/89

dancing and that a State could therefore ban such dancing as part of its liquor license control program." 422 US, at 932–933, 45 L Ed 2d 648, 96 S Ct 2561.

Judged by the standards announced in LaRue and Doran, the statute at issue here is not unconstitutional. What the New York Legislature has done in this case is precisely what this Court has said a State may do in Doran. Pursuant to its power to regulate the sale of liquor within its boundaries, it has banned topless dancing in establishments granted a license to serve liquor. The State's power to ban the sale of alcoholic beverages entirely includes the lesser power to ban the sale of liquor on premises where topless dancing occurs.

Respondents nonetheless insist that LaRue is distinguishable from this case, since the statute there prohibited acts of "gross sexuality" and was well supported by legislative findings demonstrating a need for the rule. They argue that the statute here is unconstitutional as applied to topless dancing because there is no legislative finding that topless dancing poses anywhere near the problem posed by acts of "gross sexuality." But even if explicit legislative findings were required to uphold the constitutionality of this statute as applied to topless dancing, those findings exist in this case. The purposes of the statute have been set forth in an accompanying legislative memorandum, New York State Legislative Annual 150 (1977).

"Nudity is the kind of conduct that is a proper subject for legislative action as well as regulation by the State Liquor Authority as a phase of liquor licensing. It has long been held that sexual acts and performances

may constitute disorderly behavior within the meaning of the Alcoholic Beverage Control Law . . . .

"Common sense indicates that any form of nudity coupled with alcohol in a public place begets undesirable behavior. This legislation prohibiting nudity in public will once and for all, outlaw conduct which is now quite out of hand."

[4] In short, the elected representatives of the State of New York have chosen to avoid the disturbances associated with mixing alcohol and nude dancing by means of a reasonable restriction upon establishments which sell liquor for on-premises consumption. Given the "added presumption in favor of the validity of the state regulation" conferred by the Twenty-first Amendment, California v LaRue, supra, at 118, 34 L Ed 2d 342, 93 S Ct 390, we cannot agree with the New York Court of Appeals that the statute violates the United States Constitution. Whatever artistic or communicative value may attach to topless dancing is overcome by the State's exercise of its broad powers arising under the Twenty-first Amendment. Although some may quarrel with the wisdom of such legislation and may consider topless dancing a harmless diversion, the Twenty-first Amendment makes that a policy judgment for the state legislature, not the courts.

Accordingly, the petition for certiorari is granted, and the judgment of the New York Court of Appeals is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice Marshall concurs in the judgment.

Exhibit # 11
3/21/89

[479 US 92]

CITY OF NEWPORT, KENTUCKY, et al., Petitioners

v

NICHOLAS A. IACOBUCCI, dba TALK OF THE TOWN et al.

479 US 92, 93 L Ed 2d 334, 107 S Ct 383, reh den 479 US 1047, 93 L Ed 2d 862, 107 S Ct 913

[No. 86-139]

Decided November 17, 1986.

Decision: City ordinance banning nude dancing in bars held constitutional under Federal Constitution's Twenty-first Amendment although local voters, not city, had power to decide whether liquor could be sold in city.

SUMMARY

A city ordinance in Newport, Kentucky prohibited the performance of nude or nearly nude activity on the premises of a business establishment licensed to sell liquor for consumption on the premises. Proprietors of Newport liquor establishments that offered nude or nearly nude entertainment sought declaratory and injunctive relief under 42 USCS § 1983 against the enforcement of the ordinance, claiming that it deprived them of their rights under the First and Fourteenth Amendments. The trial court upheld the constitutionality of the ordinance based on the United States Supreme Court's decision in New York State Liquor Authority v Bellanca (1981) 425 US 714, 69 L Ed 2d 357, 101 S Ct 2599, in which a state law imposing an almost identical prohibition was upheld as being within the state's broad power under the Federal Constitution's Twenty-first Amendment to regulate the sale of liquor within its boundaries. On appeal, the United States Court of Appeals for the Sixth Circuit reversed and remanded, finding the decision in Bellanca inapplicable because Kentucky's constitution authorizes local voters, rather than the city or the state, to determine whether alcohol may be sold; and the Court of Appeals ruled that the city could not exercise in part a power it did not hold in full (785 F2d 1354).

Granting certiorari, the United States Supreme Court reversed and remanded. In a per curiam opinion expressing the view of REHNQUIST, Ch. J., and WHITE, BLACKMUN, POWELL, and O'CONNOR, JJ., it was held that (1) the city ordinance was constitutional under the Twenty-first Amendment despite the authority of local voters over liquor sales, since the states may

02/16/89 13:01 CDL Exhibit # 11
3/21/89

[409 US 109]

CALIFORNIA et al., Appellants,

v

ROBERT LA RUE et al.

409 US 109, 34 L Ed 2d 342, 93 S Ct 390, reh den 410 US 948, 35 L Ed 2d 615, 93 S Ct 1351

[No. 71-86]

Argued October 10, 1972. Decided December 5, 1972.

SUMMARY

After hearing evidence at public hearings relating to sexually explicit entertainment in "topless" and "bottomless" bars and nightclubs, which evidence indicated that sexual conduct had taken place between customers and entertainers, and that prostitution, rape, indecent exposure, and assaults on police officers had taken place on or immediately adjacent to licensed premises, the California Department of Alcoholic Beverage Control promulgated regulations prohibiting certain sexually explicit live entertainment or films in licensed bars and nightclubs—such regulations prohibiting the performance of specified acts, or simulated acts, including sexual intercourse, masturbation, sexual acts prohibited by law, touching or fondling of breast or genitals, displaying of genitals, and displaying films or pictures depicting such prohibited acts. Certain liquor license holders, and dancers performing at their premises, instituted a declaratory judgment action against the Department, the state, and various state officials in the United States District Court for the Central District of California, challenging the constitutionality of the regulations. The three-judge District Court held that the regulations unconstitutionally abridged the plaintiffs' freedom of expression guaranteed by the First and Fourteenth Amendments, since the regulations could not be justified under Supreme Court decisions either as a prohibition of obscenity or as a valid regulation of conduct having a communicative element (326 F Supp 348).

On appeal, the United States Supreme Court reversed. In an opinion by REHNQUIST, J., expressing the view of six members of the court, it was

SUBJECT OF ANNOTATION

Beginning on page 805, infra

Extent of state regulatory power under Twenty-first Amendment

Briefs of Counsel, p 803, infra.

EXHIBIT 12
DATE 3-21-89
HBSB'S 263,307,3

Volume 21
Numbers 1 & 2
Fall 1987 and Winter 1988

UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM

SYMPOSIUM: PORNOGRAPHY

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Rape Shield Laws—Is It Time for Reinforcement?

see esp.
38-41

EXHIBIT 13
DATE 3-21-89
H/SB's 263, 307, 342

OKLAHOMA CITY--OKLAHOMA COUNTY

1983--passed obscenity laws

588 Adult Rape Prosecutions in 1983
-455 " " " in 1987
133 less Adult Rape Prosecutions since laws were enacted

In four year period since obscenity laws were enacted in Oklahoma County:

Rape cases were down 22.6% in Oklahoma County.
" " " up 8% in rest of state.

Oklahoma County District Attorney
Bob Macy

EXHIBIT 14
DATE 3-21-89
HSB'S 263, 307, 342

511 DETROIT STREET, INC., and Executive Art Studios, Inc., Plaintiffs-Appellees,

v.

Frank J. KELLEY, in his official capacity as Attorney General, State of Michigan, (85-1279) Defendant-Appellant.

DEQUINDRE BOOKS AND NEWS, INC., and F.P. Books and News, Inc., Plaintiffs-Appellees,

v.

Hon. Frank J. KELLEY, in his official capacity as Attorney General, State of Michigan, (85-1642) and L. Brooks Patterson, in his official capacity as Prosecuting Attorney of the County of Oakland, State of Michigan, (85-1622) Defendants-Appellants.

Nos. 85-1279, 85-1622 and 85-1642.

United States Court of Appeals, Sixth Circuit.

Argued June 12, 1986.

Decided Dec. 17, 1986.

Establishment owners brought action seeking order declaring portion of Michigan's antiobscenity law unconstitutional on its face and enjoining enforcement of such law. The United States District Court, Eastern District of Michigan, Stewart A. Newblatt, J., held that portion of Michigan's antiobscenity law was unconstitutional. Michigan State Attorney General and county attorney appealed. The Court of Appeals, Boggs, Circuit Judge, held that: (1) challenged portion of Michigan's antiobscenity law was not void-for-vagueness; (2) it could not be said with certainty that language in law, which might be overbroad, was not fairly subject to constitutional interpretation by the Michigan courts; and (3) obscenity law was not impermissible prior restraint on expression.

Reversed and remanded.

1. Constitutional Law ⇐90.1(1)
Criminal Law ⇐13.1(1)

The void-for-vagueness doctrine requires that penal statute define criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in manner that does not encourage arbitrary and discriminatory enforcement; and, where statute's literal scope, unaided by narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, doctrine demands greater degree of specificity than in other contexts. U.S.C.A. Const.Amend. 1.

2. Constitutional Law ⇐90.4(1)

The greater degree of specificity, which is required of statutes capable of reaching expression sheltered by the First Amendment, was not required of portion of Michigan's antiobscenity statute, which was challenged on grounds of vagueness, where vagueness in challenged language affected only level of crime with which actor might be charged, rather than type of expression proscribed by the statute; definition of obscenity was not attacked, but rather definitions of predominant, regular, business, principal, substantial, and stock in trade were attacked. M.C.L.A. § 752.365.

3. Obscenity ⇐2.5

Michigan's first-degree obscenity law, which made person guilty of first-degree obscenity if dissemination of obscene materials was predominant and regular part of person's business and if obscene materials were principal or substantial part of stock in trade of person's business, was not unconstitutionally vague, where challenged terms were used throughout the civil and criminal code and in reported cases and where nature of the distinction between first-degree obscenity offense and unchallenged second-degree obscenity offense minimized likelihood of arbitrary or discriminatory enforcement. M.C.L.A. §§ 752.365, 752.366.

3-21-89

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

June 15, 1987

Mr. Louis J. Caruso
760 Law Building
525 West Ottawa Street
Lansing, MI 48913

Re: 511 Detroit Street, Inc., etc., et al.,
v. Frank J. Kelley, Attorney General of Michigan,
et al.
No. 86-1629

Dear Mr. Caruso:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

Joseph F. Spaniol, Jr., Clerk

Joseph F. Spaniol, Jr.

Ex 14
3-21-89 5-19-87

items to be seized and that agents who conducted searches went beyond warrants' broad scope pre-
·de reliance by government on good faith ex-
..ption of U.S. v. Leon, 468 U.S. 897, 52 LW 5155 (1984).

Question presented: Should evidence seized in reasonable reliance upon search warrant be admissible, where warrant is subsequently found to be insufficiently particularized and agents seized certain items that were not within warrant's scope?

Petition for certiorari filed 4/9/87, by Charles Fried, Sol. Gen., William F. Weld, Asst. Atty. Gen., William C. Bryson, Dpty. Sol. Gen., and Lawrence S. Robbins, Asst. to Sol. Gen.

86-1624 WITHWORTH v. WANG

Retrial—Defendant's request for mistrial—Double jeopardy—Appellate review.

Ruling below (CA6, 2/11/87):

Habeas corpus petitioner's first trial on enhanced felony charge, which ended in mistrial after prosecution could not prove that petitioner's prior conviction that was basis for enhancement was obtained with benefit of legal counsel was, in effect, acquittal; therefore, retrial violated petitioner's protections against double jeopardy, and petitioner is entitled to habeas relief.

Questions presented: (1) Can state retry criminal defendant after first trial ends in mistrial granted at defendant's request and for reasons presented by defendant? (2) Does supposed granting of motion to acquit on greater charge at close of state's case prevent trial from continuing to determination on lesser included offense, or does jeopardy bar continuation of such trial? (3) Can federal appellate court, pursuant to 28 USC 2254(d), reject findings of fact made by state courts and federal district court, where such findings of fact are fully supported by record?

Petition for certiorari filed 4/10/87, by Arthur M. Ney Jr., Pros. Atty. for Hamilton Cty., Ohio, and William E. Breyer, Asst. Pros. Atty.

86-1629 511 DETROIT STREET, INC. v. KELLEY

Statutes and ordinances—First Amendment—Obscenity—Equal protection.

Ruling below (CA6, 807 F2d 1293, 40 CrL 2312):

Michigan anti-obscenity statute making it crime for person to disseminate, or possess with intent to disseminate, any obscene material, knowing its content and character, if dissemination of obscene material is "predominant" and "regular" part of defendant's "business" at theater, store, warehouse, or other establishment and if obscene materials are "principal" or "substantial" part of "stock in trade" at that establishment, theater, store, warehouse, or other establishment, MCLA §752.365, is not unconstitutionally vague; portion of scienter definition that permits finding of required knowledge if defendant is aware that material contains, depicts, or describes sexual conduct, whether or not he has precise knowledge of specific contents of material, is suspect but may be subject to constitutional interpretation by state courts and, therefore, will not be struck down as overbroad; statutory provision for assessing very large fines does not amount to constitute prior restraint even where business also involves dissemination of protected materials.

Questions presented: (1) Is MCLA §752.365, on its face, void for vagueness and repugnant to First and Fourteenth Amendments? (2) Does MCLA §752.365, on its face, impose undue and prohibited burden upon exercise of free speech and press, and is it overbroad and contrary to First and Fourteenth Amendments? (3) Does MCLA §752.365 constitute unlawful prior restraint contrary to First and Fourteenth Amendments? (4) Is MCLA §752.365 repugnant to First Amendment and Equal Protection Clause of Fourteenth Amendment on ground that its operation and effect establish differential treatment of press absent compelling state interest?

Petition for certiorari filed 4/11/87, by Stephen M. Taylor, of Southfield, Mich.

86-1701 SOUDAN v. U.S.

Conflicts of interest—Effective assistance of counsel.

Ruling below (CA5, 812 F2d 920):

Defendant's trial counsel never formed attorney-client privilege with coconspirator, and thus there were no privileged communications between coconspirator and defendant's counsel giving rise to conflict of interest; even if attorney-client privilege were established, alleged communications between coconspirator and defense counsel would not have been privileged because statements were untruthful and supportive of false statements made under oath, and defendant was present when statements were made; any confidentiality with regard to statements made to defense counsel was waived when coconspirator testified at trial as government witness and gave full account of conversations with defense counsel and of defendant's intent to commit perjury.

Question presented: Did court of appeals err in holding that trial court did not have to make personal inquiry of petitioner regarding conflicts of interest on part of defense counsel?

Petition for certiorari filed 4/20/87, by William W. Burge, of Houston, Texas.

Employment Discrimination

86-1639 VINSON v. FORD MOTOR CO.

Age Discrimination in Employment Act—Jurisdictional prerequisites—Filing of charge with EEOC.

Ruling below (CA6, 806 F2d 686, 42 FEP Cases 681):

References by employee to Equal Employment Opportunity Commission to effect that he had been discriminated against on basis of age in his 1979 demotion, made in connection with complaint that he had been discriminated against in 1980 by not receiving promotion, was merely additional evidence in support of complaint that he was discriminated against in 1980 and not filing of charge with EEOC, which is jurisdictional prerequisite to filing civil action; accordingly, district court properly granted judgment n.o.v. against employee.

Question presented: Was stating of charge in EEOC interview statement sufficient to constitute "filing a charge" pursuant to 29 USC 626(d), where EEOC failed to restate charge on formal complaint form, which petitioner was not shown and he did not sign?

Petition for certiorari filed 4/13/87, by Arthur R. Samuel, and Broadus and Samuel, both of Louisville, Ky.

86-1660 COULTER v. TENNESSEE

Attorneys' fees—Market rate—Appellate review.

Ruling below (CA6, 805 F2d 146, 55 LW 2265, 42 FEP Cases 305, 2 LawManProfCon 430):

Hourly rates for attorneys' fee awards under fee-shifting provision of Title VII of 1964 Civil Rights Act should not exceed market rates necessary to encourage competent lawyers to undertake representation in question; absent unusual circumstances, preparing and litigating attorneys' fee petition should not exceed 3 percent of underlying case when trial is not necessary; district court did not act arbitrarily or unfairly in determining that 31 hours, rather than 62 hours claimed, were sufficient for lawyer's role in preparation of stipulations, writing of brief, and "conceptualization" of case.

Questions presented: (1) Did court of appeals err in holding that under fee-shifting provision in Title VII attorney must receive less than market rate for his or her services if appellate court believes merely competent attorney could have been hired for less? (2) Did court of appeals err in applying arbitrary percentage limit on number of compensable hours, 3 percent of hours devoted to other issues, spent in collecting fees pursuant to fee-shifting provision of Title VII? (3) Did court of appeals adopt standard of review that conflicts with this Court's standard requiring "concise but clear" explanation for fee award when it affirmed significant reduction in request for attorneys' fees merely because it did not believe that district court acted arbitrarily or irrationally?

Petition for certiorari filed 4/16/87, by Barry Goldstein, of Washington, D.C., Robert Belton, of Cambridge, Mass., and Julius LeVonne Chambers, Charles Stephen Ralston, and Eric Schnapper, all of New York, N.Y.

86-1703 LANCASTER v. BUERKLE BUICK HONDA CO.

Age—Waiver of rights under Age Discrimination in Employment Act.

Ruling below (CA8, 809 F2d 539, 42 FEP Cases 1472):

Former employee's unsupervised broad release in termination agreement of all claims against employer bars employee from litigating Age Discrimination in Employment Act claim, even though claim was not expressly mentioned in agreement; evidence does not support former employee's contention that he did not knowingly and willingly release all employment-related claims.

Question presented: Are validity of waivers by older employees of their rights under Age Discrimination in Employment Act governed by provisions of Fair Labor Standards Act, as applied to cases brought under Title VII of 1964 Civil Rights Act, or by ordinary contract principles applied to agreements in general?

Petition for certiorari filed 4/21/87, by Neil P. Convery, of St. Paul, Minn.

86-1749 BENZIES v. ILLINOIS DEPARTMENT OF MENTAL HEALTH & DEVELOPMENTAL DISABILITIES

Sex—Rebuttal of business justification.

Ruling below (CA7, 810 F2d 146, 42 FEP Cases 1537):

Demonstration that employer has offered spurious explanation is strong evidence of discriminatory intent, in Title VII of 1964 Civil Rights Act suit alleging failure to promote because of sex, but does not compel such inference as matter of law, given that judge may conclude after hearing all evidence that neither discriminatory intent nor employer's explanation accounts for decision.

Question presented: Does plaintiff in Title VII case who proves employer's proffered explanation to be unworthy of credence and therefore pretextual prove intentional discrimination as matter of law?

Petition for certiorari filed 4/27/87 by Robert P. Burns and Freedman & Bornstein both of Chicago, Ill.

Environment and Conservation

86-1627 CITY OF ANGOON v. HODEL

Alaska National Interest Lands Conservation Act—Navigational servitude—Harvesting timber—Discovery—Summary judgment.

Ex. 14

3-21-89

MEMORANDUM

Citizens for Decency through Law, Inc.

TO: ALAN HEAZ

FM: MARK HESSINGER

RE: MCLA § 752.365

DATE: 8/19/87

I spoke with George Weller, Asst. Atty. Gen., on the phone. He said that, after cert. was denied, he suggested to District Judge Newblatt that he certify the question of the constitutionality of Section 2's second sentence (the only part of the statute that "troubled" the Sixth Circuit) to the Michigan Supreme Court. Mr. Weller alleged that the circuit court ordered this in their opinion. Judge Newblatt declined the suggestion, stating that the plaintiffs did not wish to pursue their action. He then issued a final judgement that said only that the plaintiffs dropped the action. Mr. Weller told me that Judge Newblatt is "very anti-us...for the porn people." The status hearing was conducted without a court reporter. So the only record that exists is contained in Mr. Weller's notes.

Mr. Weller then filed an appeal, which is pending, with the Sixth Circuit as to whether it did order Judge Newblatt to certify the question to the state supreme court. Mr. Weller said that he did not seek a writ of mandamus because he did not wish to further the animosity that apparently exists between Judge Newblatt and the Attorney General's office. Mr. Weller said that he is not too sure of the chances of a favorable ruling on his appeal unless he gets the same panel of judges. He said, too, that if the Sixth Circuit lets the judgment stand, it will obviously complicate later obscenity prosecutions.

Finally, Mr. Weller was interested in your trip to Michigan next week. He invites you to call him if you are near Lansing then.

517-373-1110
AG's office

11000 North Scottsdale Road, Suite 210 • Scottsdale, Arizona 85254 • 602-483-8787
CDL Founded 1957

EXHIBIT 15
DATE 3-21-89
HB SB's 307, 263, 342

Louis POLYKOFF; IAS, Inc., a corporation; Charles Stuart; Charles Clapp, etc., et al., Plaintiffs-Appellants,

v.

Tom COLLINS, in his official capacity as Maricopa County Attorney, Defendant-Appellee.

No. 84-2328.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Jan. 14, 1987.

Decided May 7, 1987.

Corporations and individuals who were owners or employees of bookstores and video stores selling materials depicted adults engaged in various sexual activities filed complaint seeking injunctive relief and judgment declaring Arizona statute pre-

Exhibit #15
3/21/89

may be imposed for violation of criminal law").

3. The Alleged Chilling Effect

Appellants' final argument is that the felony fine provisions impermissibly chill protected speech because of the threat of large fines. They contend that, in the legitimate attempt to punish and deter the distribution of unprotected materials, *see, e.g., Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 54–55, 57, 93 S.Ct. 2628, 2633, 2635, 37 L.Ed.2d 446 (1973); *Kingsley Books, Inc. v. Brown*, 354 U.S. 436, 441, 77 S.Ct. 1325, 1327, 1 L.Ed.2d 1469 (1957), the existence of the high felony fine provisions has the incidental effect of inhibiting first amendment rights—the distribution of adult materials that are not "obscene." *See Younger*, 401 U.S. at 51, 91 S.Ct. at 754. In support, appellants point to statements in the record that, in response to Collins' announcement in March 1985 that he intended to prosecute actively under § 13–3502, owners of approximately 80% of the video stores in Maricopa County that carried adult materials pulled all of those materials off the shelves, even though they believed that some were non-obscene and thus constitutionally protected.

[23] This argument is considerably weakened by the correct understanding of the felony fine provisions as limited by the ABA sentencing guidelines. Fears of $150,000 fines for financially unable individuals or $1,000,000 fines for "mom and pop" stores are unfounded. In fact, as noted above, the fines actually imposed to date have been modest. The record does not indicate that any stores pulled adult materials off the shelves on the basis of a correct understanding of Arizona's felony fine system. Any chilling effect that may have been based on an incorrect understanding of the law is not constitutionally cognizable. *Cf. Laird*, 408 U.S. at 13–14, 92 S.Ct. at 2325–26 (holding that an allegation of mere "subjective 'chill' " does not create a justiciable controversy).

[24] Whatever chill may arise from Arizona's felony fine system, properly understood, is attributable to the state's legitimate deterrent goal. Any criminal obscenity statute "will induce some tendency to self-censorship and have some inhibitory effect on the dissemination of material not obscene." *Smith v. California*, 361 U.S. 147, 154–55, 80 S.Ct. 215, 219, 4 L.Ed.2d 205 (1959). Those who conduct their affairs close to the boundary of proscribed activity necessarily incur some risks. Although certain criminal penalties might impermissibly chill the exercise of first amendment rights, we are not called upon to delineate the permissible range of measures that a state may employ to regulate obscenity. We hold only that appellants have failed to demonstrate that the effect of Arizona's felony fine provisions, properly understood, on protected expression is not "minor in relation to the need for control of the conduct and the lack of alternative means for doing so." *Younger*, 401 U.S. at 51–52, 91 S.Ct. at 754.[9]

CONCLUSION

For the reasons discussed above, we affirm the district court's decision denying appellants' request for declaratory and permanent injunctive relief.

AFFIRMED.

9. Appellants' observation that the potential chill is heightened by the difficulty of determining on which side of the "dim and uncertain" obscenity line a court will deem that a particular item falls, *see Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 66, 83 S.Ct. 631, 637, 9 L.Ed.2d 584 (1963), affords no additional support here. Arizona's definition of obscenity tracks the Supreme Court's definition and is thus not unconstitutionally vague. In addition, potential chill is mitigated by the requirement of scienter for a violation of an obscenity statute. *See Mishkin v. New York*, 383 U.S. 502, 510–12, 86 S.Ct. 958, 964–65, 16 L.Ed.2d 56 (1966); Ariz.Rev.Stat.Ann. §§ 13–3501.3, 13–3502 (Supp.1986).

Exhibit #15
3/21/89

The Court's recent decision in Ohio Civil Rights Commission v. Dayton Christian Schools, Inc., 54 LW 4860 (1986), provides useful guidance. There, the Court held that federal courts should have abstained where a religious school brought a civil rights action against a state civil rights commission to enjoin the commission from proceeding against the school on a sex discrimination complaint brought by one of the school's teachers. The Court relied on two factors to determine whether abstention was required: the importance of the state interest, and the existence of an adequate opportunity to raise constitutional claims.

The Younger doctrine is fully applicable to the pending state administrative proceeding in this case. Both of the factors discussed in Dayton Christian Schools counsel in favor of abstention here. First, the state's interest in the safety of its roadways is considerable. Although criminal proceedings implicate state interests of the highest order, the state interest here is consistent with other kinds of state interests that the Court has found sufficient to invoke abstention. Moreover, the IDOT administrative proceeding is "in aid of and closely related to criminal statutes." The state initiated the proceeding, and the proceeding is premised on the driver's violations of state traffic laws, for which the state imposes criminal penalties.

The driver also will have an adequate opportunity to raise his constitutional claims in the state proceeding. State law provides that judicial review of IDOT actions may be sought in accordance with the state Administrative Procedure Act. That Act specifically provides for judicial review of agency action for constitutional violations. Furthermore, the state courts have shown no reluctance to reach constitutional claims in actions for judicial review of IDOT administrative proceedings.

One further factor militates in favor of abstention in this case. Several of the driver's constitutional challenges to the state statute and the IDOT rule involved here would require the federal courts to interpret those state provisions. It is possible that the state courts would interpret these provisions in a way that would foreclose the need for review of some of the driver's federal constitutional claims.—Wollman, J.

—CA 8; Ronwin v. Dunham, No. 86-2123, 5/13/87.

ABSTENTION—

Pendency of state declaratory judgment action seeking determination of constitutionality of state obscenity statute does not warrant federal court abstention from federal action seeking declaratory and injunctive relief on same constitutional question.

Arizona's obscenity statute makes it a felony to commercially distribute "any obscene item." At the time this action commenced, the statute provided that an item is "obscene" when: "(a) The average person, applying contemporary state standards would find that the item, taken as a whole, appeals to the prurient interest; and (b) The item depicts or describes, in a patently offensive way, sexual activity [as described elsewhere in the statute]; and (c) The item taken as a whole, lacks serious literary, artistic, political or scientific value." The Arizona Supreme Court interpreted the term "prurient interest" in State v. Bartanen, 591 P2d 546 (1979), and upheld that interpretation against an overbreadth challenge.

The plaintiffs, corporations and individuals who are owners or employees of bookstores and video stores that sell materials depicting adult sexual activities, filed this action against the county attorney seeking relief pursuant to 42 USC 1983 and the Declaratory Judgment Act. They alleged that the statute is unconstitutionally overbroad because the state's definition of "prurient interest" encompasses expression protected by the First and Fourteenth Amendments. They sought a declaration that the statute is facially unconstitutional and an injunction restraining the county attorney from enforcing it.

Two days before the scheduled hearing on the plaintiffs' motion for a preliminary injunction, the county attorney filed a declaratory judgment action in state court naming the plaintiffs as defendants and seeking a declaration that the statute is constitutional. The same day he filed a motion to dismiss in the federal action, arguing that the district court should abstain in view of the state proceeding.

Abstention under Younger v. Harris, 401 U.S. 37 (1971), is required if (1) there are pending state judicial proceedings that (2) implicate important state interests and (3) provide an adequate opportunity to raise federal questions. The third requirement is clearly met in this case: The state action presents precisely the same question raised in the federal action. Furthermore, the state proceedings were "pending," as they were initiated before any proceedings of substance on the merits had taken place in the federal court.

This case, however, does not satisfy the second Younger requirement. Younger abstention is appropriate only if the federal action would affect important state interests that are " 'vital to the operation of state government,' " Ohio Civil Rights Commission v. Dayton Christian Schools, 54 LW 4860 (1986), and, in non-criminal cases, only when "the State's interests in the proceedings are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government." Pennzoil Co. v. Texaco, 55 LW 4457 (1987).

This case does not implicate the kind of state interest that warrants Younger abstention. Although Arizona's interest in the regulation of obscenity is important, the state action here is not the type of enforcement proceeding that has justified abstention under this doctrine. Nor does this case, as in Pennzoil, involve a challenge to the processes by which the state compels compliance with the judgments of its courts. Instead, the state action seeks a declaratory judgment on the same federal issue as that involved in the federal action: whether the obscenity statute violates the federal Constitution. Considerations of comity do not counsel abstention in these circumstances.

The plaintiffs argue that the construction given the term "prurient interest" in Bartanen is unconstitutionally overbroad because it permits conviction on the basis of items that excite only normal sexual thoughts and desires, items that are constitutionally protected. This court disagrees. The construction of the term "prurient interest" in Bartanen does not encompass expression protected by the First Amendment.—Nelson, J.

—CA 9; Polykoff v. Collins, No. 84-2328, 5/7/87.

Criminal Law and Procedure

SEARCH AND SEIZURE—

Police officers' warrantless entry of private home and seizure of evidence of crime that firefighters inadvertently discovered in plain view while lawfully on premises does not violate Fourth Amendment.

Firefighters responding to a fire in a house rented by Bell removed a woodstove, the apparent cause of the fire. Two firefighters were sent to check the attic directly above the burned area to make sure there were no smoldering embers. The attic was full of smoke and had to be ventilated before they could gain access. Upon reaching the attic, the firefighters noticed plants being grown. They believed that the attic contained a marijuana growing operation, having noticed that two large lights were being used to grow 75 to 100 plants.

The assistant marshal called a deputy prosecutor for advice on how to handle the matter. The prosecutor recommended that the evidence be confiscated. After returning to the house, the assistant marshal called a deputy sheriff to assist in the seizure. The deputy arrived and went to the attic. A "human chain" of sheriff's officers and firefighters was formed to remove the evidence from the attic.

Bell argues that the warrantless seizure violated his constitutional rights.

Firefighters, like policemen, are subject to the Fourth Amendment. The firefighters' role here is justified by the "plain view" exception to the exclusionary rule. First, there was a prior justification for their original intrusion—the fire. Second, the discov-

EXHIBIT 16
DATE 3-21-89
H/SB'S 263, 307, 342

Lolo, MT.
March 15, 1989

The Honorable Larry Stimatz,
State Senator, State Capitol,
Helena, MT. 59620

Dear Senator Stimatz: Re: Anti Obscenity (Porno)Bills

The following is submitted on behalf of my children, grandchildren and all the victims of Pornography and its related crimes in Montana. My hopes and prayers are that this Legisature will adopt Porno legislation within the guidelines of the U.S. Supreme Court decision in "Miller v. California" now in effect in most States, and in support of the Federal laws on Obscenity.

By way of background, I was born in Cut Bank, MT., 12/11/13. I served in the U.S. Navy in China 1934-37 during the Sino-Japanese War and in combat during WWII. I was admitted to practice law in Montana in 1949 and before the U.S. Supreme Court in 1966. I served some 35 years in law enforcement, in Naval Intelligence, 7 years in the U.S. Border Patrol on the Canadian & Mexican Borders, 19 years as a F.B.I. Agent and 8 years as Missoula County Sheriff.

During 1952-63 as a FBI Agent I investigated Organized Crime, including its involvement and control of racketeering, gambling, dangerous drugs, prostitution, porno and other related crimes. Most of this service was in Southern Calif. It included investigation of"major hoodlums" throughout the U.S. including Chicago, New York, Miami and Mexico. For several years I was assigned to investigations organized by then U.S. Attorney General Robert Kennedy. These investigations disclosed that Organized Crime controlled most Porno, that Porno, dangerous drugs, related crimes of violence, prostitution and VD were closely inter-related. I visited under cover, not under the covers, among other criminal hangouts, porno shops, and houses of prostitution, where all forms of deviate sexual conduct and porno materials were available & crime flourished. I talked to many children, girls, women, prostitutes, porno performers. Some had been forced into deviate sex acts. Some were forcibly injected with heroin and/or cocaine, forced into drug addiction so they could be better controlled by the pimps & porno producers. I learned that most victims of porno, those that survive, wind up diseased and mentally unbalanced, inmates of institutions and a burden on the taxpayers.

I obtained search warrants and seized thousands of films, porno publications, torture equipment such as manacles, whips, leather bondage, dog collars, face masks, rubber goods for sex use, instruction manuals, items for sexual perversion & human debasement, and also dangerous drugs. I was involved in numerous arrests of pimps and porno producers, most, if not all with records of criminal violence. I talked to hundreds of men & women, many involved in porno or whose crimes were

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influenced by porno.

During 1970-78 as Missoula County Sheriff, I organized and trained the Region I, Western MT., anti drug team that conducted investigations throughout the State at the request of County Attorneys. In 1973 I had investigations conducted of porno book stores and a porno theatre in Missoula. I obtained search warrants and, with the County Atty., raided 3 book stores, seizing several thousand items identical or similar to items I had seized in Calif. when in the FBI. I raided the porno theatre twice. The owner promised not to reopen. But, effective January 1, 1974, the Montana legislature gave Montana the weakest porno law of any of the 50 states. Subsequently the theatre reopened. This permissive porno law encouraged the merchants of filth, permitting anyone 18 years of age or older to sell or purchase porno material, even though it was then and still is, a felony under the Federal law to transport obscene matter for sale or distribution in interstate commerce.

Also, subsequent to Jan. 1, 1974, a porno book store opened within one block of Hellgate High School. A Missoula Doctor complained that students, some of whom were 18 years of age, were obtaining hard core porno from this store, furnishing it to younger students. Some had come to him with venereal diseases acquired as a result of emulating what they learned from obscene material from this store.

During January and February 1975 I assigned a Deputy Sheriff, a Vietnam Vet who I thought was mature enough to handle porno material, to investigate the Missoula porno theatre & porno book stores. A film "Animal Lovers" was advertised in the Missoulian newspaper. In this movie a young girl, described as "our little farm girl" performed various sex acts with a dog, a pig and a horse including performing fellatio on these animals, all in living color, leaving nothing to the imagination. During these acts of bestiality the movie commentator was urging the audience to engage in such acts also. The girl remarked that she had been performing these acts since she was 12 years old. Other films viewed by this Deputy included a naked woman being raped, forced to perform fellatio, etc. while her husband was restrained & forced to watch. Other sexual acts, some deviate, and including lesbian acts were included in the movies, explicit & in color.

Having viewed the above movies, this Vietnam Vet Deputy concluded his report, "It is beyond my imagination how these movies have any redeeming social value, or value of any sort, except to line the pockets of the producers. Certainly anyone who experiences a need to view this type of movie needs help.... it only serves to give an already sick mind a rationalization for its sickness, thus making it harder to cure it."

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A Deputy Sheriff was assigned in January to surveil & enter the bookstore, porno bookstore, located near Hellgate High School, There he observed photos & books depicting naked men & women, homosexuality, sodomy, lesbian acts & other deviate sex acts, all in color, all explicit, all for sale.

In another Missoula porno book store, still in operation to this date, a Deputy Sheriff interviewed the sales girl, age 20 years, on Feb. 1, 1975. She told him that porno books accounted for 95% of the sales. Other, non porno books, were also displayed for sale. Ages of the purchasers of porno books ranged from 18 yrs. to 65 yrs. She stated she admitted juveniles into the store but "had to tell them to leave the porno section". She said she did not ask for IDs but relied on her judgement as to the age of the purchasers. She said the number of persons entering the store who were under 18 yrs. of age was "noticeable". This salesgirl listed man/woman sex acts as most popular, second were gay magazines, third sado-masochism, violent sex acts, fourth the books depicting lesbian acts. She said some books depicting bestiality were available. This store also had a film section where hard core movies could be viewed. Sexual vibrators were also sold. The salesgirl said that the porno newspaper "Screw" was a popular seller. See attached copy of article in the Missoulian 10/13/75 in which a New York Times News Service article states "Nearly all of the major hardcore porno.... in the United States are distributed by companies controlled by organized crime members...." "Al Goldstein, the editor & publisher of Screw openly discussed the Mafia ties....We have no options...No legitimate distributor will touchus. I'd deal with Hitler if I had to..."

Enclosed is copy of movie ads in Feb. 1, 1975 Missoulian, advertising two hard core movies listed in the "Final Report of the Attorney General's Commission on Pornography". These ads appear adjacent to an ad for a Hellgate High School play. The movie "Deep Throat" is described in the Attorney General's report, page 438.

With Attorney Tom Beers of the Attorney General's, Office, Montana, I testified before the MT. legislature with the above information, without success.

Since retirement as Sheriff in 1979, I have somewhat kept abreast of law enforcement through subscriptions to the FBI Law Enforcement Bulletins, Citizens for Decency Through Law, National Coalition against Pornography, and the Christian Legal Society, composed of Christian attorneys. Enclosed are copies of some materials from these publications. Perhaps the most alarming of these is the "AIDScare, a message from CDL President" relating to the death of "Pornographic Star John Holmes" from aids at age 42. Holmes a cocaine user bragged about having sex with more than 14,000 women - one might ask how many of them have aids.

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Following are some cases involving porno handled while I was Sheriff 1970-78:

1. A 15 yr. old arrested for sex assaults on 5 to 8 yr. old girls who stated he did so after being sexually aroused by reading a porno magazine kept under his bed.

2. A 47 yrs. old sex deviate & ex-con with lengthy criminal record who had numerous porno books & movies in his possession, admitted becoming sexually aroused by them, following which he would seek out rape victims who he would also rob & assault in unnatural ways. While on parole, following arrest, he admitted sexuallyassaulting & robbing 21 females, 8 yrs. of age & up.

3. A 19 year old who stated he became a homosexual after watching obscene movies and association with other homosexuals he met at porno movies. He turned to bondage sex of women prompted by obscene matter. He was arrested after murdering one of his victims.

4. 2 men who frequented porno theatre, had porno materials in their possession when arrested. After viewing porno movie they ordered a 23 yr. old woman into their car. When she refused they stabbed her several times in theabdomen, & slashed her neck several times. They then threw her down a river bank. She survived. The two men were convicted of attempted deliberate homicide & aggravated assault.

5. Self mutilation matter. A young man working alone in a remote area who had porno books including self mutilation matter in his possesion. Over a period of months these books led him to slash himself, his body, including his sex organs. They bore old healed wounds. He finally died from loss of blood.

Law enforcement is practically powerless to prevent porno materials from being made available if these can be legally sold to adults, being made available to juveniles.

At a time when Montana seeks funds to improve our schools, more and more tax dollars are needed for the criminal justice system, the police, courts, jails & prisons, to handle the cost of crime spawned by pornography. The cost in human misery due in whole or in part to pornography is incalculable - broken homes, abandoned, mistreated & sexually assaulted children, disease, caring for the mentally disturbed, etc.

In closing, someone has said, "Keep the rivers clean that flow into the lake, and the lake will be clean. Keep the rivers of knowledge clean that flow thru the minds of our children, our people, and their minds will be clean".

Sincerely,

John C. Moe

John C. Moe
7750 Moe Road
Lolo, MT. 59847

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Aids victims are dying in Montana today - 3/21/89

AIDScare

A MESSAGE FROM CDL PRESIDENT AND NATIONAL DIRECTOR

Bill Swindell

A small article in the obituaries section of the newspaper recently caught my eye. I normally don't read that section, but the headline blared, "Pornographic star John Holmes dies."

Holmes was a central figure in the Laurel Canyon bludgeon murders of four people in 1981. These gruesome murders remain unsolved after seven years.

However, on the first of March, just 12 days before Holmes' death, the *Los Angeles Times* reported that a new witness had surfaced and police were again questioning Holmes about his involvement.

The porn film industry, too, wrote about the killings, but in an exonerating style. The *Erotic Film Guide* said that the deaths were caused by a "drug rip-off that went sour. John had set up a robbery and had then been forced by the victim, a Hollywood gangster and club owner, to inform on the robbers. The gangster allegedly then sent a couple of thugs to the Laurel Canyon home of one of the robbers, killing him and three others. Holmes did not turn state's evidence...and eventually he was freed."

Holmes had gone to jail in 1981 for 111 days on contempt charges for refusing to identify the killers, saying he feared for his life.

But now he's dead anyway — of AIDS — at the young age of 43.

Holmes was a "super" star, "The King" of male porn films, a "hero" that the industry displayed like a proud peacock.

He appeared in more than 1,000 hard-core films over two decades (an average of 50 a year or four a month).

He bragged about having sex with more than 14,000 women.

He had an expensive cocaine habit.

He was a heavy drinker.

Yet his long-time friend and fellow "actor," Bill Margold, called him a "very private person."

The only thing that was really "private" was the rumor that Holmes suffered from AIDS. The porn industry was being very hush-hush about that. They were covering his illness as a "bout with colon cancer."

Because if AIDS were known to be the cause of Holmes' death, how would his 14,000 sex partners be affected? And what if some — or all — of them later had sex with new partners? The number of infected people could become astronomical! In fact, the "performers" might get scared out of the business. There could be some heavy financial losses. So, I doubt very much whether the sleaze merchants even considered warning any of Holmes' unsuspecting partners of the rumors.

Even at the time of this writing, no one in the porn business had publicly admitted that anyone, even Holmes, had AIDS. In fact, in the February, 1988 issue of *Adult Video News,* porn actress Nina Hartley bragged about the precautions the porn industry uses to avoid the AIDS virus.

Evidently, they don't work.

Inside sources reveal that prolific gay-porn producer Steve Scott died of the disease late last year, followed by another AIDS death earlier this year: 28-year-old bi-and-homosexual porn producer Steven West.

Then John Holmes. The sex marketers, of course, are now claiming that Holmes contracted the disease from needles used during his drug years.

However, Holmes' widow Laurie told talk show host Larry King that "John never used intravenous needles, and, in the last five years has not been on drugs at all..." She believes that the porn business is "trying to cover up John's death."

Mrs. Holmes added that actors and actresses are tested *infrequently* for the AIDS virus, though the porn industry wants the public to think that they are responsible people.

In the *Los Angeles Times* Metro Digest of March 18, it was stated that "a group of adult film industry actors has organized a (AIDS) testing program. The tests will be conducted April 5 at the Awareness Testing Center in Van Nuys, paid for by the Los Angeles-based Adult Video Assn.," group officials said.

However, as of April 11, no one had showed up. Perhaps it's as Bill Margold, the previously mentioned friend of Holmes, said when he was asked about precautions against the transfer of AIDS. His flippant remark was, "They (porn-viewing public) want to see us take chances. It's like a circus. They don't want to see a net under the high-wire act."

Gary Oliver, an X-rated film reviewer, was also quoted in the *Los Angeles Times* last year as saying, "People who have an awful lot of sex, well, it's inevitable someone will get it (AIDS)."

Tragically and ironically, AIDS is a high-risk threat to the porn actors and producers, as well as the end users.

There's the "anonymous" sex encounters at so-called "adult bookstores and peep shows." The walls of show booths are specifically manufactured with pre-drilled holes for quick, casual, and anonymous homosexual activity.

How many homosexual and bisexual people who frequent these places are naively or knowingly transmitting this deadly virus? How many pedophiles will brutally and callously penetrate innocent and unsuspecting little boys and girls after having numerous sexual encounters with infected carriers?

While the ACLU and the porn world receive the attention of the press regarding "civil rights" of AIDS carriers and porn merchants, thousands of people — children as well as adults — will be insidiously infected with a disease that will ultimately take their lives.

If this were an outbreak of hepatitis or meningitis, our public health officials would be scrambling to take the necessary action to stop the dying.

Not so with AIDS.

The bisexual/homosexual lifestyle is being promoted and advanced. The media have become the zealots, blindly defending anything in film or print.

We must insist that factual information be given to the public and to the potential victims of this disease-proliferant industry.

There is no longer any doubt that pornography is not a victimless crime. The question now is: How many thousands? Or how many millions? ☆

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Summer no time to rest; hot battles lie ahead

By Jerry R. Kirk

Summer is upon us, traditionally a time when things slow down and we take things easy. Unfortunately, the slowdown does not include pornographers and the harm they do. They continue to reap a tremendous harvest of profits from the degrading, humiliating and violent material they produce.

In turn, our work cannot stop. We have been moving ahead in some very important ways. On a national level, two crucial things have taken place.

First, we test-marketed our national television special in 40 cities across America. The test results have been tremendous. Our conservative estimates tell us that we will receive a two-to-one return in giving to what we spend on airing the TV special. That means we can move ahead boldly with the airing of the special in hundreds of cities across the nation.

As we do, more understand how the pornographers are changing the landscape of America by promoting a twisted view of sexuality—and in the process, hurting people and devastating lives. As people understand the harm that pornography causes, they inevitably stand up and cry, "No more!". After all, the Supreme Court has recognized the right of a community to protect its quality of life by regulating the availability of pornography. I urge you to exercise that right.

Second, we have hired a new vice-president, Doug Reed, who will be our National S.T.O.P! Campaign director (see article on page four).

We aren't letting the summer slow us down in our work, and I hope you won't either.

Doug will be a tremendous asset to our staff and will help expedite S.T.O.P! campaigns across the country.

We aren't letting the summer slow us down in our work, and I hope you won't either. As described elsewhere in *Standing Together*, the Child Pornography and Obscenity Enforcement Act of 1988 is emerging as an issue of tremendous importance to our cause. It has tremendous potential for good—if passed. We need to work together to make sure it gets passed. So we can't afford to slow down, yet.

Kansas Indicts NY Firm

Minors receive obscenity in mail

KANSAS CITY, Mo.—The office of the Kansas Attorney General has brought indictments against two New York mail-order companies who sent unsolicited pornographic material through the mail. The advertisements sent offered to sell hardcore pornographic tapes and other related material.

Both persons receiving the unwanted material were minors. In each case, the mailings offering the videos, as well as the videotapes themselves, are being tried as obscene material.

If convicted, the two companies face posting a $50,000 bond for two years as well as fines.

One difficulty with such cases as these is tracking down a corporation in New York, as it is common practice in the pornography industry to use "shell" corporations to shield the actual owners from criminal prosecution.

Porn 'significant contributor' to spread of sexual diseases

James Mason, director of the Centers for Disease Control in Atlanta, is alarmed by the growing AIDS and sexually transmitted disease problem. Most sexually transmitted diseases "occur in people under 25 years of age," he says. "It is a battle that science can't win. In fact, science is losing ground rapidly," Mason warned.

"Almost every one of our [20] sexually transmitted diseases are out of control. There are more cases of almost every one of those 20 in 1987 than there were in 1986. A growing proportion of those cases are in young adults and adolescents. AIDS is just one manifestation of sexually transmitted disease out of control, but . . . it doesn't matter which one of these is that we talk about—they are out of control because the nation's behavior is out of control," Mason said.

"I can't help but believe that an indulgent society that permits pornography on media that is seen casually by youth and adults, I can't help but believe that that is a significant contributor to the epidemic of sexually transmitted disease in our country. Technology just cannot compensate for the way that these diseases are spread, and many of these diseases cannot be prevented by drugs or prevented by vaccine."

Contacting the N-CAP office:
(513) 521-6227
8:30 AM to 5 PM (EDT)
Monday through Friday

Standing Together

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National Decency Reporter
Newsletter of Citizens for Decency through Law, Inc.
VOL. XI, NO. 4 September-October, 1974

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Porno and Sex Violence - are Partners in Crime

In an August 27 speech to assembled Police Chiefs in Chicago, Attorney General William Saxbe expressed deep concern over the rising crime rate. The nation has suffered "a severe setback" in the war against crime, said Saxbe, who attacked "permissiveness of all sorts" as a cause of rising crime.

"As a society, we seem to have absolutely lost our perception of a variety of things that can corrupt and distort the young," said Saxbe. He denounced alcoholism, drug abuse and pornography, which he said has become "as widespread as baseball."

Attorney General William Saxbe

CDL welcomes and encourages Attorney General Saxbe's concern in this area. Years ago J. Edgar Hoover deplored the fact that "Sex-mad magazines are creating criminals faster than we can build jails to house them." The former FBI Director spoke out frequently on the relationship of pornography to crime. In an article published by *This Week Magazine* several years ago, Mr. Hoover said:

> What we do know is that in an overwhelmingly large number of cases sex crime is associated with pornography. We know that sex criminals read it and are clearly influenced by it . . .
> I believe pornography is a major source of sex violence. I believe that if we can eliminate the distribution of such items, we shall greatly reduce our frightening crime rate.

Mr. Hoover expressed concern long before the real explosion of hard-core pornography that we have witnessed the past four years. Law enforcement officials – from Attorney General Saxbe on down – are even more convinced today of the relationship of pornography to crime.

Police in Duluth, Minnesota, blamed the increase in sex crimes on the amount of pornography in that city. One recent case involved the sexual assault of a baby sitter by a man whose wife said he had been obsessed since seeing an X-rated movie that included a rape scene. Another case involved the attempted rape of three girl hitchhikers by a man who admitted being incited by pornography viewed in a Duluth "adult" bookstore.

Duluth police also report an increase in juvenile sex crimes in which pornography serves as a model. A 12-year-old boy was caught experimenting sexually with two six-year-old girls with the pages of a porno magazine (belonging to the girls' father) opened to color photos depicting similar activity among adults.

CDL Survey

As reported in the May-June, 1974 issue of the *Reporter*, CDL recently surveyed Police Chiefs in California. The survey questionnaire sought professional opinions regarding the relationship of pornography to sex crimes and information on specific cases considered especially relevant.

Respondents to the survey *unanimously* confirmed what intelligence and common sense have long recognized. California Police Chiefs agree with Attorney General Saxbe – and the late J. Edgar

(Continued on page 2)

Prosecutor of the Month

Charles R. Lindsay, Assistant District Attorney, Shreveport, La.

CDL's Prosecutor of the Month is Charles R. Lindsay, Assistant District Attorney of Caddo Parish, (Shreveport) Louisiana.

Mr. Lindsay is a graduate of Louisiana State University Law School where he currently instructs in Criminal Law and Procedure. After several years in private practice he joined the Caddo Parish District Attorney's staff in 1967.

Under the leadership of District Attorney John A. Richardson, Caddo Parish has maintained an aggressive policy of obscenity law enforcement. As Assistant District Attorney responsible for obscenity prosecutions, Lindsay obtained lower court judgments against two pornographic motion pictures, "The Stewardesses" and "Last Tango in Paris" – to abate them as *public nuisances*. The nuisance judgment against "The Stewardesses" was upheld by the Louisiana Supreme Court and was then appealed to the United States Supreme Court.

(Charles Lindsay was finding out the hard way what many prosecutors around the country have learned. The defense for porno films is highly financed and very aggressive. They are willing – and financially able – to take most every case all the way up to the

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Link Traced Between Mafia And Pornographic Magazines

Missoulian 10/13/75

By NICHOLAS GAGE
(c) N.Y. Times News Service

NEW YORK — Nearly all of the major hardcore pornographic newspapers and periodicals in the United States are distributed by companies controlled by organized crime members, according to law enforcement officials, underworld figures and some of the newspaper owners themselves.

The largest of these publications is Screw, a weekly tabloid-sized newspaper that has a circulation of 85,000. The total circulation of the dozen leading pornographic papers, all distributed by the same two companies, is about 300,000.

In an interview with The New York Times, Al Goldstein, the editor and publisher of Screw, openly discussed the Mafia ties of the two companies that distribute these papers.

"We have no options as to who we deal with," he said. "No legitimate distributor will touch us. I'd deal with Hitler if I had to. I'll deal with anyone I can do business with."

Screw is published by Milky Way Productions, Inc., which was founded in 1968 by Goldstein and James Buckley, who recently gave up his interest to his partner to devote his time to producing and distributing movies.

The liberalization of city laws has spawned dozens of papers containing sexually explicit articles and pictures. They bear such names as Pleazure, Hooker, San Francisco Ball, Whips & Chains, Hot Stuff and Smut. According to law enforcement officials, Mafia members are involved in the distribution of all of them.

These papers had difficulty finding distributors when they started and ultimately turned to companies connected with organized crime.

Police officials and federal agents who have been investigating organized-crime involvement in the pornography industry said that publishers of such publications have had to give these companies a higher share of profits than is customary or an outright interest in their papers to obtain distribution.

Own No Share

Goldstein, 39, said that neither of the two distributors he dealt with owned any interest in Screw, but he said that he paid them much higher rates than regular publications pay.

Most pornographic papers are distributed nationally by a company called Star Distributors, which is located in Manhattan. In New York City, distribution of pornographic papers is mainly handled by Astro News, with offices in Brooklyn.

Both Star Distributors and Astro News have strong Mafia ties, according to law-enforcement officials and underworld sources.

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John L. Harmer accepts position as President of Citizens for Decency through Law.

CDL Founder Charles Keating announced the appointment of John L. Harmer as the new President of Citizens for Decency through Law (CDL). Mr. Harmer is the former Lieutenant Governor of California and a long-time participant in the battle against pornography. The new CDL President resides in Bountiful, Utah, with his wife, Carolyn, and their 10 children.

"I am thrilled that John Harmer has agreed to accept our offer to become the Chief Executive Officer of Citizens for Decency through Law," stated Keating. "For many years John Harmer was one of the outstanding participants in the battle against pornography, and I feel he is the best prepared man in the country to lead CDL into the next phase of its existence," said Keating.

When Harmer notified Keating that he would come to CDL, he said, "I accept this opportunity with the realization of the heavy responsibility it places upon me. I strongly believe the survival of this republic will be more dependent upon the internal moral values of the nation than upon any other factor. Except for the homes of America and our churches, there is no other entity which

(cont'd. on page 6)

Editorial

Some months ago I was in my hotel room while on business in Washington, D.C., when the phone rang. It was Charles Keating, Founder of Citizens for Decency through Law (CDL). He wasted little time and came straight to the point. Would I consider coming to CDL as President and Chief Executive Officer?

It was nearly 20 years ago that I first became involved with the anti-pornography movement. As a California state Senator and later as the Lieutenant Governor of California, my deepest concern was to strengthen family and community life and to oppose the conspiracy of destruction that such vile powers as the porno industry supported.

Since leaving public office in 1975, I have been relatively uninvolved and away from the anti-porno arena, except as a plaintiff in some court proceedings. In reply to Charles Keating's invitation to return and to once again take up the "sword" against the purveyors of smut, my strong resolve was to say "no." I had no reason to forego the far more pleasant aspects of corporate law for the soul-wrenching conflict of the anti-pornography crusade.

Then Jim Clancy of California and CDL General Counsel Bruce Taylor began to educate me on what has happened since the mid-seventies. My mind was stunned and my heart sickened at what I heard. I could not believe that a nation's values could have descended so far so quickly – and yet it is true.

I recall a television debate with an A.C.L.U. lawyer in San Francisco in 1967 or 1968 in which I asserted that, "...if the present trend is allowed to continue, within 10 years we will have movies being shown in neighborhood theaters with indiscriminate viewing of every form of sexual conduct."

My prediction was jeered with derision by my opponent, the moderator and the audience. Mine was a typical "reactionary scare tactic" used by the "holier than thou" folk who were determined to impose their Victorian prudish ways upon society as a whole. I still cringe as I recall the contemptuous snickers from the audience.

The tragedy of my statement was that it took less than half the time I predicted to realize the evil foretold. The greater tragedy is the stunning realization of how far our society has deteriorated in those years. That which should outrage and offend is casually accepted as "our way of life." The vulgar and vile depictions of what should be the most private and sensitive expressions of love in marriage are excused as "necessary" by literary critics of the arts.

More bitter to me than the despicable nature of today's pornography is the realization of how desensitized our society has become. The subtlety with which our minds and souls have become calloused to degeneracy is the ultimate tragedy of all.

We know of many authentic accounts of lives ruined by pornography. Yet our body politic has accepted – though thank goodness not yet embraced – the depravity of today's porno purveyors. Slowly, but most certainly, we have been led down a pathway of good intentions, but tragic omissions as smut and filth were dignified as "necessary advancement of the arts." No nation which has its values and priorities so hopelessly mired in muck can expect to long survive.

After prayerful and intense consideration of what would have to be given up, what would have to be endured and, above all, the price our society must pay if CDL failed, I agreed to spend one-half of my time with CDL and the anti-porno crusade.

I return to this cause with the certain conviction that I could not answer a clear conscience to my ancestry or my posterity if I were to do otherwise. When the moral values of a people are so completely awry as to have a jury of citizens find a movie like Caligula not obscene or an appellate court declare that the proven exploitation of children in degenerate sexual conduct is not actionable, then, indeed, "eternal justice" will demand and execute vengeance upon such a people.

The battle against pornography is a battle of national survival. Our republic will be destroyed by its own internal decadence, as others before it, if we do not stem the tide.

This is your battle too; your family – your heritage – your country which must be saved. We still have time – but none to spare. I plead with you to join me now – and others at CDL – in the great fight for decency as a national quality. We must succeed.

John L Harmer

John L. Harmer

EXHIBIT 17
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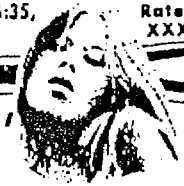
H/S SB 2623, 2624, 2625

STUDIO-1

265 W. Front-ADULTS ONLY-Ph. 728-9814
Dick and Jane 11:00, 12:50, 2:40, 4:30, 6:20, 8:10 10:00, 11:50
Company's Coming-11:55, 1:45, 3:35, 5:25, 7:15, 9:05, 10:55
Rated XXX



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This is your first grade reader
Grown up

PLUS Hard Core Porno

"Company's Coming"

Starring John Wadd

High School Play

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for the entire family

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Hellgate Auditorium
Adults $1.50 Students $1.00
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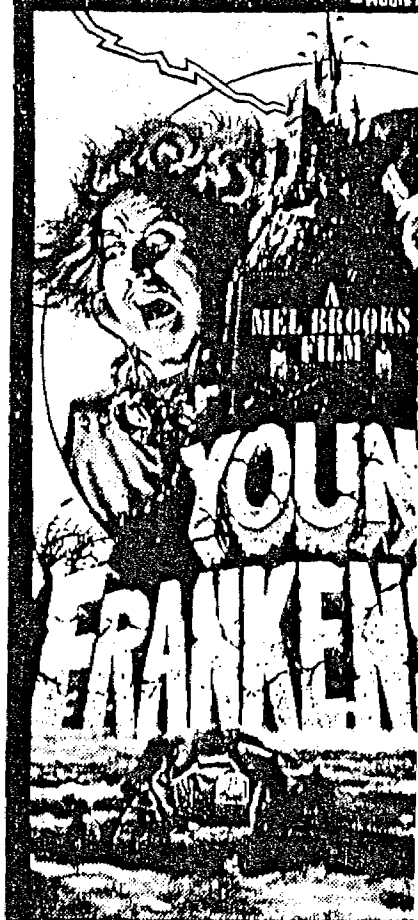

"YOUNG FRANKENSTEIN" GENE WIL
MARTY FELDMAN · CLORIS LEACH
KENNETH MARS · MADE
MICHAEL GRUSKOFF MEL BROOKS GENE
MARY W. SHELLEY
PG

Complete Shows (With Cartoon) at 12:00-2:20-4:40-7:00-9:20

Sh

BILLINGS POLICE DEPARTMENT
Narrative/Information

EXHIBIT
DATE 3-21-89
Date
HB SB's 263, 307, 342

Report #

Complainant/Victim

Address

Mr Chairman, Mr. Vice Chairman, Mr. Halligan, gentlemen. I support good solid legislation that protects our families from the degredation that is exhibited on stages and the newstands of the local market. I support legislation that would force businesses to be held accountable for exhibiting pornographic material openly to the pulblic.

I have been a police officer for the Billings Police Dept for about 15 years. During that time, it has come down to "you name it, I've seen it.' During my tenure as a police officer, I've arrested totally nude dancers who were'nt even employed by the establishment they were in, but just "caught up" in the moment of passion, to arresting a homosexual who had just sexually asaaulted an under cover officer who was trying to make cases on prostitutes. I've arrested a man for soliciting for prostitution. I've been 86'ed from a local nude dancing bar because he thought I was harrassing him because of arrests I had made there. He was later arrested for building a drug lab. Do you know what a"glory hole"is? It is a hole drilled in the wall between two movie arcade booths so that sexual favors can be performed annonymously. Prostitutes turn tricks in the booths along with homosexuals. Bathrooms in some of these establishments become miniture brothels. One of the bookstore clerks said that she had to clean the seemen from the floors and walls of the booths a couple of times a day. I walked into one of the businesses on a routine business chec aswe are assigned to do, and observed a man masturbating in one of the booths with the door open. We have caught prostitutes turning tricks right outside the doors, in cars.

Reporting Officer	ID #	Div	Date	Approved By	
Randy Vogel					
Assisting Officer	ID #	Div	Time	Date	Time
Billings Police					

BILLINGS POLICE DEPARTMENT
Narrative/Information

EXHIBIT 17
Date 3-21-89
HB SB's 263, 307, 342

Report #

Complainant/Victim

Address

Hug and mug is a term coined in Billings to refer to the prostitutes that put one hand down the pants of the patron exiting from the adult theatre while the other hand is in his pocket. It has also been very evedent that drugs flow freeley from these joints because of the number of cases made in or near them. I have'nt even touched on the assaults that occur.

All this was brought to a strong light when I heard on the radio this past week, how Theodore Bundy, Mass murderer said that he was very strongly influenced by the pornography that he was exposed to as a child and how that influence continued to control him as an adult. He told also of many others inflicted in the same way.

I spent five years in the detective division, as a crime scene photographer and technition. I had an occassion to assist in the investigation of several homocides. There were a couple where the defendant was heavily involved in pornography. The victims had been mutilated.

Gentlemen, I could continue. I have three innocent children, ages 7,9, and 10. I don't want them exposed to this kind of filth in any way, especially as victims of some sexual deviate. I don't think that I could handle that. I would implore you to act in controlling these types of establishments, adult book stores, movie houses, porno emporiums, and nude dancing establishments. I'm sorry that I don't have all the answers, but I've only tried to point out to you that there is a real problem that needs to be dealt with. I'm fearful, gentlemen, but not to the point of dysfunction, and thats why I'm here. I am in no way attempting to covince you to legislate morality, only protection for my family and yours. Thank You

Reporting Officer	ID #	Div	Date	Approved By	
RANDY VOGEL					
Assisting Officer	**ID #**	**Div**	**Time**	**Date**	**Time**
Billings Police					

EXHIBIT 18
DATE 3-21-89
HB SB's 263, 307, 342

March 20, 1989

House Legislative Subcommittee on Pornography,

I am a native Montanan, happily married and a father of four children. I have worked at Montana State Prison for over 7 years and currently supervise the counseling staff at MSP.

I ask you to support the three legislative bills before you regulating obscenity and nude dancing. While working at MSP I have been convinced through my contact with Sex Offender's that pornography promotes sexual abuse.

I am attaching three letters from inmates at MSP who are currently in the intensive treatment program for Sex Offender's. They also request your support of these bills and give testimony to the impact of pornography in their lives and in their sexual offenses.

I also ask you to look at the most recent Attorney General's report on pornography and their findings. They also conclude that pornography is harmful and give support for regulation of obscenity.

Thankyou for your time and support,

Jon D. Berg

Correctional Treatment Supervisor

Jon D. Berg

EXHIBIT 19
DATE 3-21-89
HB 98 SB 263, 307, 34

To whom it may concern:

My name is Martin and I am serving a sentence in the state prison at Deere Lodge, Montana for sexual intercourse without consent, kidnapping and assault.

I have been asked if I would like to share with you what I have learned about pornography and what it has done to my life and what I have seen it do to others.

I am a sex addict, it started many years ago when I was a child and has grown over the years. The reason I say this is because the pornography was a major part of my addiction. It started with buying magazines such as Police Gazette because of the pictures on the cover. Then that wasn't satisfying me so I started to buy Playboy and Penthouse because of the pictures and stories, but even that wasn't enough and I went to the real hard core material. I also started to go to strip joints and adult book stores. My quest for the bizarre and erotic became an obsession with me until I ended up in prison for rape.

For a lot of years I felt it was my constitutional right to read anything I wanted to. I would have fought to the death my right to do so. Now after seeing what it has done to my life and the lives of my victims. I truly wish there had been laws against the making and selling of this type of material.

I want to say at this time that pornography didn't make me rape that girl. The choice was mine wrong as it was. It did give the permission giving statements that I needed to do so. The message I got from pornography was,"just look at the girls in the books and movies they are enjoying it. This is what they want so I will give it to them."

Since I have gotten into the sex offenders program here I have been able to see my thinking errors and I have had major changes in my thinking on this subject. I believe that all pornography should be outlawed. It not only hurts the person

EXHIBIT 9
DATE 3-21-89
HB SB'S 263, 307, 342

who buys it but it also harms the women who pose for it. The saddest part is what kind of messages it gives to the kids who are able to get a hold of it. Chances are they will grow up with the wrong ideas about sex and women in general and that leads to offending.

I am writing this in the hope that something can and will be done to stop the spread of pornography. If this letter helps to stop one person from being a victim it will be time well spent to me and I will feel that I have repaid a very small part of my debt to society.

The pornographers will say this is not so but I have been their from New York to Hollywood and I have seen with my own eyes the hurt and pain this stuff can cause it needs to be stopped now! The makers of pronography say that it hurts no one but it does, all they are concerned about is how much money it will make them. They never look at what it does to the people who pose for it or buy it and it's time that they did!

I really believe that if it is stopped the number of sexual crimes will drop by at least 25% or more. So please hear the plea of an addict who has been their. Stop this before to many more women and kids are victimized by it's use.

Thank you for your time in reading this it means a lot to me.

SINCERELY YOURS

Martin L Sanders

MARTIN SANDERS
AO#26136
700 CONLEY LAKE RD.
DEER LODGE, MONTANA 59722

EXHIBIT 20
DATE 3-21-89
HB SB'S 263, 307, 342

To The Legislative Subcommittee On Pornography:

I am 36 years old and am currently incarcerated at Montana State Prison for committing the crime Felony Incest. Pornography has been a major part of my life since I was 14. Over the years I became addicted to pornography, I became dependent on my weekly fix of pornography. When I was a teenager I started by reading, looking, and masturbating to pornographic books and magazines. When I moved to Billings from a small town in Wyoming I started to view pornographic movies at the x-rated theaters, and eventually was watching x-rated videos in my home.

I am currently in the sex offenders intensive treatment unit here at Montana State Prison and am becoming aware of just how addicted I was to pornography. I sexualized my life, and with the state of mind I was in, pornography to me reinforced to me that sex was the answer to all my problems. I put my viewing and masturbating to pornography as my top priority in life. My weekly fix of pornography became more important to me then my wife and children. I justified my viewing of pornography by telling myself I was not hurting any one else and that other people did it, so why couldn't I. At the same time I was living a life of guilt and shame, knowing that I was not "normal" and the secret life of not wanting my friends and family to know what I was doing.

From the knowledge I have gained from the sex offenders [illegible] program I know that

EXHIBIT 20
DATE 3-21-89
~~H~~SB's 263, 307, 342

I must abstain from all kinds of pornography. Viewing any kind of pornography for me is a warning sign to me that I am back in my sexually obusive cycle, viewing all women as sexual objects, there to sexually satisfy me.

Sincerely,

Tom Sage

EXHIBIT 21
DATE 3-21-89
H/S SB's 263, 307, 342

MARCH 8, 1989

TO: THE LEGISLATIVE COMMITTEE ON PORNOGRAPHY

I believe pornography has had an impact on my life and my sexual behavior. It separated me from true feelings and emotions and reality. It led me to view women as sexual objects which produced fantasies that would continue to grow into more deviant fantasies. Through my years I've felt inadequate, inferior, and feared rejection which made it difficult to relate to many women, so I turned to pornography to release my stress and tension. Pornography grew stronger and stronger as time went on until I became addicted, and at times out of control to it's power and control over me. I was avoiding reality and turning to images to satisfy my sexual urges and masturbating knowing I would it be rejected, hurt, or feel inadequate. It only satisfied me temporarily and then I'd feel shame, anxiety, loneliness and desperation which would trigger more fantasies and pornography. I tried keeping my addiction a secret and would hide it and sneak it, learning to rush my orgasm or ejaculation, which only made me feel inadequate with women when I pre-ejaculated. I believe it was a factor in my relationships with women. When I felt I couldn't relate to women, or my wife when I was married, I knew I could substitute with pornography. I believe pornography was a factor in the breakup of my family and divorce because it caused a lack of communication and understanding with my wife as I substituted with pornography and then also fantasising of children. My fantasies would keep progressing to more inappropriate ones starting with exposing and eventually progressing to molesting children. I did have some pocket books of stories about men molesting children, which I'm sure would be child pornography even though there were no pictures. I believe these books started my deviant fantasies of children, and also fueled more deviant fantasies to children which I eventually acted out by exposing and molesting them.

EXHIBIT 21
DATE 3-21-89
HB SB's 263, 307, 342

I even showed pornography to children to get them curious and to stimulate them in hopes of molesting them. I am very sorry for what I did to hurt and affect my victims because they were beautiful innocent children and I caused them hurt and pain and confused them emotionally. It was a terrible sick act on my part and I'm doing all I can to change my behavior. I'm currently in the sex offender intensive treatment program here in prison and have only praise for it because it's an excellent program and has been a great deal of help to me, and has given me the tools and learning to know myself and to control my deviant behavior, as well as other inappropriate behaviors. This program has put me in touch with my feelings, and emotions and I now feel more self esteem, confidence, control, adequate, and more human than I ever have. I can communicate better and trust people more and see others as human.

I believe many children can get or have access to pornography. I have witnessed or had children tell me of pornography they had seen or have access to get or see. It seemed to me most children seen it or had access to it at home or at friends homes. What parents or adults think are hidden, most children being curious will usually find; I also found my dads pornography that he had hidden. I believe pornography creates deviant fantasies and is a substitute for not dealing with problems of inadequacy and sexual relations with women and in my opinion increases the number of rapes, incest, and child molesting and increases the chance of deviant fantasies being acted out. I am writing this letter to voice my concern to help in some way to lessen the chances of sexual abuse in our society. I know how pornography has messed up my life and my victims lives and played a factor in my molesting children, and how I hurt them emotionally and psychologically. I'm totally against pornography and want to help prevent innocent children from the fear and hurt of sexual abuse, and help fight pornography.

Sincerely,

Bob Frigge

EXHIBIT 22
DATE 3-21-89
HB SB 263, 307, 342

3-20-89

Dear Sirs

I'm writing this as a concerned citizen who was directly and adversily effected by an adult book store moving into the general proximity of my business where I lived with my family. My position and point of view is one I would like you to consider when making your decision on the three obscenity bills.

This is a quote from a U.S. Supreme decision that I have found very true. " It concerns the style and quality of life, now and in the future. A man may be entitled to read an obscene book in his room, or expose himself indecently there...We should protect his privacy. But if he demands a right to obtain the books and pictures he wants in the market, and to foregather in public places- discreet, if you will, but accessible to all - with others who share his tastes, then to grant him his right is to effect the world about the rest of, and to impinge on other privacies. Even supposing that each of us can, if he wishes, effectively avert the eye and stop the ear (which in truth, we cannot) what is commonly read and seen and heard and done intrudes upon us all, want it or not.

Would it adversily effect you if a porno business opened by your house or business?

Please support and vote for the passage of the 3 obscenity bills. Thank you.

Sincerely,

Don Nelson

EXHIBIT 23
DATE 3-21-89
HB SB's 263, 307, 342

8585 Hwy 35
Bigfork, Mont. 59911
March 20, 1989

Honorable Rep. Dave Brown Chairman Judiciary Com.

Rf. SB263- SB307- SB342

I am very concerned that we pass the PORNOGRAPHY BILLS without ammending them to death.

One of the arguments I have heard is that 'girlie magazines don't effect their readers.' I ask the question, if that be the case, why do we send children to school?

I know that research proves otherwise!

We all know the Ted Bundy story and how he testified that he got started around the age of 12 on girlie and detective type books and continued to want more until he started committing the crimes he had seen in pictures---- There are many other cases.

I am sending a page out of the Feb. 1989 American Family Association. I realize we can't stop National smut, but we CAN do something about Montana.

To help protect our communities from this kind of violence (rape, torture, and murder) please pass SB263- SB307- SB342.

Sincerly,

Walt Dupea

as the answer to prayer. She then dies in peace, knowing they will get her baby to safety.

After burying the baby's parents, Ethan says a prayer over their graves. There was not a single instance of profanity or objectionable content in the story. Advertisers included:

Chrm. E.T. Pratt, Jr., **Pfizer, Inc.**, 235 E. 42nd Street, New York, NY 10017, Ben-Gay rub, Desitin skin products, Iron cologne, Lady Stetson women's cologne, Nuance perfume, Unisom, Visine eye drops.

Chrm. Edward A. Brennan, **Sears Roebuck & Company**, Sears Tower, Chicago, IL 60684, Coldwell Bankers realty, Dean Witter financial service, Discover credit card, Kenmore appliances, Western Auto stores.

Coke, Ralston Purina ads, NBC's 'LA Law' promote sexual bondage

The December 22 rerun of NBC's LA LAW continued the series' inclination to handle in the most distasteful manner their endorsement of sexual perversion, this time promoting sexual bondage. Scott Goldstein produced and David Kelly wrote the episode.

As usual, occasional profanity is also included. The episode centers around the show's chauvinistic, sex-hungry attorney Becker. He is auctioned off at a women's charity function. The woman who "buys" him takes him home for sex; as he prepares to leave, she handcuffs him to the bed.

Advertisers helping NBC promote sexual bondage in prime-time family viewing hours include:

Chrm. Roberto C. Goizueta, **The Coca-Cola Company**, P.O. Drawer 1734, Atlanta, GA 30301, Arista Records, Hi-C fruit drink, Minute Maid orange juice, Sprite soft drink, Sunny Delight drink.

Chrm. William P. Stiritz, **Ralston Purina Company**, Checkerboard Square, St. Louis, MO 63164, Almond Delight cereal, Chex cereal, Energizer batteries, Purina pet food, Tender Vittles cat food, Wonder Bread.

Sears, PM/General Foods ads on NBC series with drunks, illicit sex

Drunkenness and illicit sex combine for great family-time entertainment on NBC's January 5 episode of DEAR JOHN. The David Hackel teleplay was produced by Dave Hackel and Bob Ellison.

Series hero John invites Kate to his place for dinner. They both get drunk and decide Kate can't drive home, so they go to bed fully clothed in John's bed. When they awake up the next morning, however, they discover that they are both naked and neither can remember what happened. Kate's clothes are strewn all about John's one-room apartment, including inside the refrigerator.

In a few days, in front of their singles support group, they discuss, anonymously, their drunken sex fling. Other "humor" is added in the character of a perverse elderly woman who interprets numerous straight lines with sexual connotation. (Example: KATE: We need to approach it from another angle and start in again. WOMAN: My husband used to enjoy that!)

This family-time sleaze show was sponsored in part by:

Chrm. Hamish Maxwell, **Philip Morris, Incorporated**, 120 Park Avenue, New York, NY 10017, Birds Eye foods, General Foods products, Cheese Whiz, Post cereals, Stove Top stuffing mix.

Chrm. Edward A. Brennan, **Sears Roebuck & Company**, Sears Tower, Chicago, IL 60684, Phone 312-875-2500, Allstate insurance, Coldwell Bankers realty, Discover credit card, Kenmore appliances.

Mazda, RJR Nabisco have ads on NBC series with prostitution theme

Sex and violence (via a psychopathic prostitute and a violence-prone hero) are the key ingredients for NBC's December 25 repeat of MIDNIGHT CALLER. The episode was written and produced by Richard DiLello. The San Francisco-set series features Jack, an ex-cop turned all-night disk jockey.

Establishing Jack as hero-main character, the episode touts a little gratuitous violence

DATE 3-21-89
585 263,307,3

Networks go for new depths of sleaze

As all three major networks made drastic cuts in their in-house censor divisions in recent months, producers and writers jumped at the opportunity to dive for new depths of sleaze.

The following script is from a SATURDAY NIGHT LIVE skit aired December 31 on NBC. Executive producer was Lorne Michaels; producer was James Downey.

The men in the skit are supposedly at a nude beach, hidden only behind a narrow bar made of bamboo. The following dialogue occurs:

"Hey, guys!"

"Hey, Bob. Hey, your penis looks great today."

"Well, thanks, Jack. Yours too."

"Hey, Bob."

"Hi, Ted. How's your penis?"

"Not bad."

"Good. Good."

"Hey, I'd like you guys to meet Doug."

"Hi, Doug."

"Hi, guys."

"Hey, pretty small penis you got there."

"You could pick a lock with that penis."

"Hey, that's ok. There's plenty of guys around here with small penises."

"Hey, Bill, come on over here and show (Doug) your penis."

Bill and Doug meet and continue:

"So I guess you got a pretty small penis."

"Yeah, I guess so."

"That's okay. I hear it really doesn't matter to women."

"Yeah, I read that too."

"OK, guys, enough of the small penis talk."

One man talks of his vacation and asks the others if they would like to see pictures.

"Penis looks great."

"Here I am playing tennis with my dad."

"Hey, you've really got your dad's penis."

"By the way, Jack, what have you done to your penis? It looks great!"

"I go to this place on Long Island. They do great work."

"You got an address?"

"Yes."

"I'll write it on my penis so I won't forget it."

"So, Doug, where are you from?"

"Vermont."

"It's cold up there. Must be tough on your penis?"

"You're from Denver, right?"

"Good penis town."

Several women approach and join the conversation:

"Hey, who's the new guy with the penis?"

"Doug."

"Hi, Doug."

"Hi."

"Pretty small penis."

"That's ok."

"Thanks."

"Hey, Dave, just made a great sand penis. You ought to come down and see it before the tide comes in."

"Yeah—it's got testicles and everything."

The skit ends with the men singing a song about penises.

NBC is owned by General Electric. GE can be contacted at: Chrm. John F. Welch, Jr., **General Electric**, 3135 Easton Turnpike, Fairfield, CT 06431. Phone 203-373-2211.

Advertisers included:

Chrm. Hamish Maxwell, **Philip Morris, Incorporated**, 120 Park Avenue, New York, NY 10017, Breyers Ice Cream, General Foods Products, Kraft food products, Maxwell House coffee, Post cereals.

Chrm. William P. Stiritz, **Ralston Purina Company**, Checkerboard Square, St. Louis, MO 63164, Chex cereal, Energizer batteries, Hostess snack foods, Meow Mix cat food, Wonder Bread.

EXHIBIT 24
DATE 3-21-89
HB SB's 263, 307, 342

March 20, 1989

To Whom It May Concern:

I would like to go record as supporting Senate Bills Nos. 307, 342, and 263. I am a member of the Montana Library Association and a librarian at the University of Montana, Mansfield Library and I disagree with the position of the Montana Library Association on these bills. I feel that the youth in Montana are our most prescious resource and that they need to be protected from those seek to destroy their happiness. I feel that the actions described in these bills seek to destroy the foundations of the home and happy family life and therefore should be prohibited. I hope that you too will be in favor of these bills and remember that even though large organizations may be against these bills, I am sure that many parents, such as myself even though I belong to one of those organizations, do wholeheartedly support these bills.

Sincerely,

Dennis L. Richards

Dennis L. Richards
Professor and Documents Librarian, Mansfield Library, U. of M.

EXHIBIT 25
DATE 3-21-89
HB SB'S 263, 307, 34

Feb. 7, 1989

To: Members of Montana Senate Judiciary Committee
Mr. Bruce D. Crippen, Chairman

My name is Barbara Henry of Great Falls Mt., as concerned parent and citizen of this great state known for its "Big Sky," grand wilderness and clean living— or is it? In the last ten years or so we've seen Great Falls allow one adult book store after another open its doors, several "massage parlors" with questionable business practices, also an adult movie theatre with the "booths" used for homo-sexual practices and this building was on Central Ave! and most recently an adult entertainment center boasting of 30 XXX rated videos, dancers, and a complete selection of magazines, books, & material aids and videos for any preference and now their latest attraction out-of-state phone numbers to call - and of course one video store after another with large displays of "adult" videos and pornographic magazines - and with all of this, sexual crime in Great Falls has increased greatly - one has to wonder if all of these establishments have contributed to this increase in crime. Last year, 311 ~~reported~~ sex offenses were reported, ranging from obscene phone calls to rape - 95 of these 311 complaints the offender had physical contact with

EXHIBIT 25
DATE 3-21-89 2
H/S SB's 263, 307, 342

the victim - public awareness has brought a greater response and demand that something be done - "This type of offense effects our entire community - Everyone suffers" (Deputy County attorney Hubbell) - 14 Charges were filed by prosecutors - of those; I personally know that 3 young boys were molested by a teenage babysitter who used pornographic material during the process of his actions on his first arrest he was allowed to go "free," (Even though the 2 boys (ages under 10, contacted a venereal disease) he went on to molest a 4 years old boy within a year of his first arrest.

And so far this year - 4 arrest for felony sexual assaults were filed involving victims under 13 years of age.

Here allowed pornography to come from an "underground" existance to main street exposure. Even though efforts to place soft - core pornography out of sight of minors by concerned citizens was conducted a few years ago - it has become more & more evident. Today, we must recognize the effect that all pornography has on our society as a serious problem - we must accept that pornography can be very addictive to those who have tendencies to "act out" what they view - the frequent users - We must educate

ourselves to what pornography is teaching members of our communities as "so-called normal" lifestyle - We must deal with this serious problem today. It is no longer just a moral issue - but one of great serious sexual crime in our society -

Many studies and interviews with sexual offenders have been conducted in the last few years - resulting in finding a definite link between pornography and sexual crimes, murders and child molestations - The Final Report of the Attorney General's Commission on Porno-graphy is one the most extensive sources that states this link or cause - also Dr. Victor Cline, Ph.D, of the Dept of [redacted] Psycology, University of Utah - states, that after the treatment of hundreds of sexual offenders - including rapists, child molesters, voyeurs and other ~~compulsive~~ compulsive sexual actions, with few exceptions, pornography has been found to be a contributor in the acquisition of their deviation. Regardless of their deviation was, Dr. Cline found a near universal four factor syndrome common to nearly all he treated - that syndrome includes -

1st phase - Addiction effect - once involved - they keep coming back -

2nd phase - escalation phase - the need for

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DATE 3-21-89
HB'S 263, 307, 342

more explicit, more clevant material -

3rd phase - desensitization phase - what was first shocking, taboo, immoral is now commonplace - accepted

4th phase - increasing tendency to ACT OUT sexually what they have been exposed to - whether it be sex with animals, child molestation, rape, etc.

With the recent execution + interview of Ted Bundy (where he stated he was drawn to the use of pornography at a very young age (12) - we all know by the results of that addiction - Also another well-publized sex offender Gary Bishop, a child molester + homosexual - executed for the molestation + murder of several young boys - Also the young child molester in Great Falls I mentioned before here who has used pornography as a stimulant. As we dare, today, not do all we can do to remove all Hard-core pornography that deals mainly in violent sex - and it is not protected by our Constitution - no one has a right to buy, sell or disseminate this material - and - As for soft-core (Playboy, Penthouse) which is the main reason I'm here today - or writing this letter - with all the

evidence we have concerning the harmful and addictive nature of this material - Also I want to mention the (1986) - New Jersey results of a Gallup poll taken that reveals the largest users of pornography is young people ages 12-17 - and over 13 years have been exposed to hard-core pornography - (it was stated they would be willing to act out such depicted sexual actions - real-life testimony has been recorded to that fact - resulting in deaths and pregnancies of very young people - Presently I'm employed at a grocery store that sells & displays soft-core - Playboy - Penthouse - I have witnessed some pretty disgusting incidences involving this material - a young boy (age 11-13) who had taken a Playboy magazine from the rack while I was busy checking - he hid himself behind another rack and was fondling himself, while his friend was running around giggling - which is what brought my attention to find out what was going on - one has to wonder if this young person will go on to a life such as Bundy's & the young child molester I mentioned before - we, as clerks, try to keep an eye on the magazine rack but in the evenings, only one checker is on duty up front and when it is busy it is almost impossible to watch ~~for~~ once the rack is behind us. - Also a mother complained to me & the manager that her teenage son

EXHIBIT 25
DATE 3-21-89
HB SB's 263, 307, 342

had stolen several copies of Playboy + or Penthouse - and we find these magazines hidden throughout the store - all this gives substantial reason why SB 342 is needed to help regulate + control whose hands these magazines end up in - we can't regulate private conduct but we can regulate public conduct!

And with the evidence that early exposure to pornography can lead to life that ends up in sexual deviation and crime - isn't that reason enough for action to be taken to prevent its happening in as many lives as possible - to save even one life - whether user or victim is reason enough!

- Pornography, both hard-core and soft-core, is a weapon in the hands of child molesters - used to lower the child's inhibitions -
- Pornography is produced solely as a sexual stimulant -
- Pornography prevents the development of maturity, sexually, a person is made to believe self-satisfaction is normal even if it includes violent acts on the victim, even death.
- Pornography promotes the "rape-myth" that the woman enjoys being raped
- Pornography teaches that children, even infants, are for sexual gratification of the offender -

EXHIBIT 25
DATE 3-21-89
HB SB'S 263, 307, 342

1

So I conclude with this - we, the people, look to you, gentlemen, on the Judiciary Committee to help us protect our children + ourselves from the sexual deviate, + from the possibility our own children may become the offender from the exposure of pornography — help us to remove the very present and harmful influences, a cause, of crime.

Thank you -

Barbara Henry
1117 - 10th Ave S. W.

P.S. I had a petition gathering support for this (Den Sam Hofman has copies) and there is alot of people in Great Falls that want something done - I'm still gathering signatures.

Bruce Crippen
Senate judiciary Committee

EXHIBIT 26
DATE 3-21-89
HB SB'S 263, 307, 342

Two years ago I learned that my two youn boys had been sexually molested and subjected to pornographic material.

For quite sometime I felt that somthing was very wrong with my kids but I couldn't find out what it was. On January 21st, 1987 I found out that the young man up the street from us and who babysat occasionally was using them sexually. He was a brother to two of their playmates.

I learned of this molestation inadvertently from my youngest son. He had drawn a dirty picture and put it in the head of his boy scout survival knife. He couldn't get the top off and had brought it to me to unscrew. When I had loosened it and was going to take it off he started screaming and crying, grabbed the knife and took something out of it and threw it in the garbage. Of course I retrieved it and when I saw it and started to question him it all came out. He was taking turns using them after they had gone to bed. I took them to the Dr. and had them examined. They were tested for V.D. and the oldest boy had contracted gonnareha from him. They were both given a very painful shot, and it took them almost an hour before they could even walk.

I asked my youngest boy where he had seen pictures of that nature that he could draw something like that and he said that the young man in question had shown them dirty books and done things to them.

We contacted the police and the man was arrested, held in jail for about two weeks and released. His trial was delayed and postponed for a year and then dismissed on lack of evidence.

I just can't stress strongly enough the need to pass strong and enforcable laws against pornography. To ban and eliminate a very definite link between sexual crime and the influnce of pornographic material.

I might add that the young man that molested my boys went on to molest a 4 year old boy while he was waiting to go to trial for mine. That went on after his case was dismissed and he was caught again, jailed, tried and sentenced to 10 years in jail. Five of which was suspended.

Marlene Kinnaird Elliott

EXHIBIT 27
DATE 3-21-89
HB SB'S 263,307,34

March 14, 1989
Dear Terry,

I wanted to take a moment to thank you for your involvement and personal commitment to the anti-pornography legislation you are supporting. This has been a matter that has concerned me professionally and personally for some time.

I spent four years as a Child Protection Worker for the Department of Social and Rehabilitation Services (now the Department of Family Services) in Livingston, Montana. I worked with families and children in both Meagher and Park counties and came in contact with many children who had been victims of sexual abuse. Over and over again I became aware of a common trait that emerged in nearly every case. This was the presence of pornographic magazines and movies as a part of the victimization of the children. When interviewing children they often spoke of being forced to "watch movies" and "look at pictures" with their perpetrator. In the majority of child sexual abuse cases the perpetrator is known to the child and the child's family and often spends and extensive period of time "grooming" the child and gaining their trust before there is actual physical contact. In my own professional experience I found that in 85% of my cases this "grooming" and "secret keeping" included the adult and child viewing pornographic material together. The perpetrator often made the child feel important and special by letting him or her view "adult pictures".

Those who believe pornography is innocent entertainment for adults have not seen the havoc it has caused in the lives of many people. As long as I live I will carry the memory of one particular sexual abuse case that involved two brothers and their little sister. At the time the agency became aware of the situation and intervention was made the children ranged in age from three to seven. The case was so extreme that parental rights were terminated, the children received counselling and therapy and the best foster parents we could provide. But it was not enough. The emotional damage was so extensive that two of those children have had to be institutionalized, and the youngest child will be as soon as there is an opening available. These children have little or no chance of a normal life and will spend their childhood years in an institution rather than a home. In the weeks and months following their removal from the home they often spoke of "dirty pictures" and the "naked people" they used to look at. Besides being physically and emotionally abused these children were deprived of their childhood. No one can ever replace that loss for them.

My husband and I have also been licensed foster parents for fourteen years. During that time we have cared for children who have been sexually abused and have spent many hours listening to and comforting children who have to talk to someone about what happened to them. One Saturday in particular stands out in my mind. We had planned to rent some videos, make popcorn and enjoy the evening at home. Our children were excited except for our four year old foster daughter who began to cry and said, "I don't want to watch movies, it hurts me." She became so upset we changed our family's plans for the evening until we could pursue what this little girl's real fears were.

EXHIBIT 21
DATE 3-21-89
HB 389 263, 307, 342

The Child Abuse Digest states, "Sexual abuse is defined as; inappropriate sexual contact with a child. This may be nonviolent as in fondling, caressing or indecent exposure, showing pornographic pictures to a child; or violent as in incestuous intercourse, rape or sodomy."

Experts who treat the victims of sexual abuse often report the following long term effects on the child:

- -Low self esteem
- -Guilt
- -Difficulty in forming trusting, meaningful relationships
- -Destructive acting our behavior; ie. alcohol/drug abuse, prostitution, delinquency, suicide attempts.
- -Loneliness, alienation and isolation
- -Difficulty in parenting their own children later in life.

I realize that it is possible to calculate how much revenue the sale of pornography generates, but is it possible to measure what it costs us as a society? I believe the cost is too high, especially for our children. Kids of Montana deserve the best we can provide them with, they deserve tough anti-pornography laws that send the massage that we care about protecting our young people and our families. Thanks for carrying that message!

Sincerely,

Brenda Mays.
1221 East Montana
Lewistown, Montana
59047

EXHIBIT 28
DATE 3-21-89
HB SB's 263, 307, 39

MARK H. MOZER, Ph.D.
Clinical Psychologist
Suite 4-G
Arcade Building
Helena, MT 59601
(406) 442-0333

February 6, 1989

I am a psychologist in private practice in Helena, and I have consulted at the state prison for eleven years now. I am writing in support of anti-pornography legislation currently under consideration.

No one, of course, knows in any strict scientific sense, whether pornography is cause or effect of molesting or other sexual offenses. Most likely it is both cause and effect. I've talked to hundreds of sex offenders in my consulting work at the prison, and the use of pornography, particularly as a child, is often a part of the developing deviancy. There is no question in my mind that pornography plays a significant contributory role in some sex offenses.

The defenders of various forms of pornography are fond of pointing out that scientific evidence in this area is nevertheless inconclusive. Science will never adequately settle this matter, because one would need to run an experiment, in which we'd compare the sexual development of two groups of children, one of which were given free access to pornography, and one from which it was withheld. Now the rules of science are such that we would actually have to volunteer kids for such a study in order to obtain the proper controls; one couldn't simply try to assess the effects of pornography on kids who had accidently come across the stuff. Rather, we'd have to deliberately give it to one of the groups, and withold it from the other.

I can't imagine that even the most ardent opponent to anti-pornography legislation would consider volunteering their kid for such an experiment. Doesn't that tell us something about our intuitive grasp of the potential harm of pornographic material?

Clearly the problem of sexual offenses is a complex one, stemming from a multiplicity of causes. I can't imagine that the proposed legislation will get us very far in dealing with a runaway problem of molesting and other sexual offenses; a lot more needs to be done. But I'm supporting it because I think that decent folks need to start taking a stand against the advance of sexual trashiness.

EXHIBIT 28
DATE 3-21-89
HB SB's 263, 307, 342

I saw an interesting piece of irony at the prison the other day, which underscores the ludicrous lengths to which we've bent over backwards to the advance of smut. An inmate, a convicted child molester, received a stack of mail-order sadistic child pornography pocket books (fiction, not pictorial). A sample title: No, Daddy, No! The cover of that particular book was a cartoon drawing of a naked pre-pubescent girl, bent over with her butt up in the air, and a man with a nasty grin dripping hot candle wax onto her bottom.

The prison administration wouldn't let him have the books. He is proceeding to sue the prison over denying him access to this filth, and the law requires the state to provide him with a free lawyer for his lawsuit. Now, who is sick here? There is something terribly wrong with a society that feels a need to be impeccably kind and fair toward the most vile of evils. We ought to be ashamed that we've allowed evil to turn our own sense of fairness against us.

I only wish this committee could see some of the sexually predatory people over at Deer Lodge, awaiting release made inevitable by society's refusal to deal with this problem with strength and conviction. There are a lot of hard choices facing us before the tide will be turned on sexual offenses. I think one of the easier choices will be to take a stand against pornographic material. I urge the committee's support of the anti-pornography measures facing us today.

MARK H. MOZER, Ph.D.
Clinical Psychologist

EXHIBIT 29
DATE 3-21-89
HB 583, 263, 307, 39

MISSOULA COUNTY

DANIEL L. MAGONE
SHERIFF

OFFICE OF THE SHERIFF
COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
(406) 721-5700

DOUG CHASE
UNDERSHERIFF

March 17, 1989

House of Representatives
Montana State Capitol
Helena, MT 59601

Mr. Chairman and Committee Members:

As a law enforcement officer for 18 years, I have been following with some interest the introductions of various bills restricting pornography, nude dancing, etc. I have an interest in these bills because as an investigative law enforcement officer over the years, I have found that pornography, both hard core and soft, play an important part with regard to the sexual assaults and rapes committed on young children in the Missoula County area.

Last year Missoula County alone had approximately 25 Sexual Intercourse without Consent cases involving young children, both male and female, and in virtually all of these cases, pornography was found to be an integral part of the crime. I will not say that pornography is the root cause of these crimes; however, I do know, and without a doubt in my mind, that pornography is used as a tool by these perverts to put them in a state of excitement from which these sexual acts are committed.

We have also noted in Missoula an increase in the activity of prostitution around bars that permit nude dancing. In 1988, this department arrested three Korean females involved as an organized ring of prostitution. It was later learned by this officer that organized Korean prostitutes are operating throughout the United States and has become a national problem.

I have noted with some interest in a recent Missoulian newspaper article wherein a leader with the State Library Association indicated that she would be fighting to maintain pornography, as she felt to do otherwise would be abridging the First Amendment. It seems strange to me that libraries in Missoula do not carry hard core pornography magazines as general public reading material. It seems to me that when leaders of our State Library Association support hard core pornography thru the guise of protecting our First Amendment rights,

EXHIBIT 29
DATE 3-21-89
HB SB'S 263, 307, 342

they are unwittingly assisting the pervert and at the same time, offering no assistance for our children who are being victimized on a daily basis.

It would seem to me that if pornography was of such value to society, or at least to the people who buy and use these books, that they would be willing to come forward before the committee and testify against the proposed legislation. How many perverts come before the committee requesting that these bills not be passed?

As a law enforcement officer that sees the end result with regard to the use of hard core pornography and on behalf of the children of Montana, I would request that the bills before you regulating pornography, nude dancing and display of obscene materials, be considered and passed as permanent statutes.

Sincerely,

DANIEL L. MAGONE
SHERIFF

Capt Larry C. Weatherman

Captain Larry C. Weatherman
Detective Division

LCW:dr

EXHIBIT 30
DATE 3-21-89
HB SB'S 263, 307, 342

MICHAEL J. SCOLATTI, Ph.D.
COMMUNITY PHYSICIAN CENTER 2
2831 FORT MISSOULA ROAD, SUITE 305
MISSOULA, MT 59801
Telephone 728-4100, Ext. 5445

March 16, 1989

Don Johnson
Garden City Chapel
2200 South 10th West
Missoula, Montana 59801

Dear Mr. Johnson:

I am writing this letter in support of the recent anti-pornography legislation that is being introduced in the 1989 session, specifically Senate Bill #307, and Senate Bill #342. I am a licensed clinical psychologist in Missoula. Approximately 90 percent of my practice is devoted to the assessment and treatment of sexual offenders and sexual abuse victims. I have been working in this field for the past eight years, and have evaluated and/or treated approximately 300 sexual offenders.

I want to offer some of my clinical observations as to the role pornography has played in contributing to sexually abusive behavior. It has been my experience that soft and hardcore pornography has served as a catalyst, or fuel for the deviant fantasies of sexual offenders. Even the softcore publications have impacted some perpetrators to a significant degree. I have treated a rapist-murderer whose "sexual education" began at 14 when his mother bought him a subscription to a "softcore" magazine. Even though the pictures were not violent or graphic, this offender used the pictures in his fantasies in which he constructed images of sexual domination and violence. At age 16 this man committed his first rape, at age 22 he murdered his mother. This story is not meant to infer that such exposure to pornography will create a rapist or sexual murder out of an otherwise normal adolescent. There is no one cause for child molesting, rape or murder. However, there is no doubt in my mind, from my clinical experience, that pornography can significantly contribute to sexually deviant behavior.

In conclusion, I would urge legislators to take whatever steps constitutionally possible to delete one contributing factor to sexual abuse; pornography.

Respectfully,

Michael J. Scolatti, Ph.D.
Licensed Clinical Psychologist

MJS/sm

March 10, 1989

EXHIBIT 31
DATE 3-21-89
HB SB's 263, 307, 342

To Whom it May Concern:

I have been involved in the counseling profession at both ends of the spectrum the adult, and currently with the children for 16 years.

I have worked as a prison guard, adult parole and probation officer, social service director and as a psychologist at the Warm Springs State Hospital.

I currently work with children as a school psychologist, a position I have held for eleven years.

I chose to work with children for the simple reason that children are more easily influenced by what they see and hear, they are also more vunerable.

It is rather ironic that we spend billions on disease research and prevention programs with our childrens welfare in mind, children can't start school unless they are properly immunized yet when it comes to the emotional wellbeing of our children, we leave them practically defenseless.

We have become a society where sex and violence have become second nature to us and then wonder why there is so much violation of not only the emotional wellbeing of individuals, but physical wellbeing as well.

It is time to take a stand, to look at our children and see what's happening to them and the caliber of adults we are producing. If you won't believe the statistics that research is producing then listen to what the Ted Bundy's are saying.

I urge you most sincerely to support any legislation that will protect our kids and help them grow into loving, responsible adults.

Sincerely,

George W. Arthur

George W. Arthur, M.A.
School Psychologist
Licensed Professional Counselor

THOMPSON FALLS, MT

EXHIBIT 32
DATE 3-21-89
HB SB's 263, 307, 3

western montana regional community MENTAL HEALTH CENTER

P.O. Box 562
Thompson Falls, MT 59873
17 March, 1989

Judiciary Committee
Capital Station
Helena, MT 59604

Gentlemen

Please accept my full support of the Senate Bills being presented to you in the very near future, i.e. #307, the obscenity law; #342, the harmful to minors law; and #263, the commercial nudity law. I implore you to give these Bills every consideration, and allow them to be passed in their original forms.

As a victim of sexual assault, directly related to pornography, I can attest to the long-lasting effects and suffering. Even greater impact was made when my daughter became a victim of assault, also directly related to pornography. As a professional person working daily with both victims and perpetrators of sexual assault, I am continually astounded by the escalating statistics related to crimes against our children. Our waiting lists grow; so do the rates of adolescent and teenage suicide. I know the question is posed... "Can passing these proposed laws put an end to crime?" Unfortunately, the answer is no; but it is a beginning; it can help! If only one child is saved from these abominations to God, isn't it worth it? "We The People" are concerned citizens who want an end to the vile corruption that is sweeping our nation. We want MONTANA to be known as a moral State! We want our children to be safe; Please help us.

Respectfully yours

Shari Gilbert
Administrative Aide

SG/ms

Eastern Montana Mental Health Center

204 N. Kendrick
P.O. Box 1321
Glendive, Montana 59330
(406) 365-6075

EXHIBIT 33
DATE 3-21-89
HB SB'S 263, 307, 342

March 6, 1989

House Judiciary Committee
Capitol Station
Helena, MT 59620

Dear Committee Members,

As the Director of a Sex Offender Treatment Program which provides counseling services to men who come to us, both under Court Order and voluntarily, I have come to learn some very disturbing things about the hazards pornography poses to children and these men themselves.

The hazard to children takes two forms: Exposure to pornography creates a long-lasting disturbance to a young mind; exposure to pornography makes a child much more vulnerable to be sexually abused. These are not idle concerns. More than half of the pornography which adults purchase ends up in the hands of minors.

Locally we have discovered a small business in which teenagers sell pornography to younger children and children who have been exposed to hard core pornography have had serious adjustment problems including being sexually assaultive toward younger siblings. Also locally we have had cases in which adults have used hard-core pornography to groom or train their victims to perform sexual acts.

The risk to the men themselves has also taken two forms: The development of sexual perversities; the encouragement of incest. Briefly, we have had cases of men who have developed extremely deviant and perverse sexual behaviors due to their involvement with hard-core pornography. We have also had men break down their resistance to incestuous behavior with their young daughters due to suggestions contained in soft-core pornography: I will never forget the man who came to me after he had completed most of his treatment and told me how his reading a

EXHIBIT 33
DATE 3-21-89
HB SB'S 263, 307, 342

letter in a "soft-core" magazine (which suggested that girls enjoy sex with their fathers) had been a major contributor to his engaging his own daughter in a sexual relationship.

Please do everything to give us the strongest legislative protection you can!

Sincerely,

Pete Bruno, M.Ed.
Licensed Professional Counselor
Sex Offender Treatment Director

PB/bs

PETE BRUNO
PO BOX 684
GLENDIVE, MT 59330

3/4/89

EXHIBIT 33
DATE 3-21-89
HB 58'S 263, 307, 342

THE HOUSE JUDICIARY COMMITTEE
CAPITOL STATION
HELENA, MT 59620

RE. PORNOGRAPHY/OBSENITY LEGISLATION

LADIES AND GENTLEMEN:

AS A THERAPIST WHO SPECIALIZES IN WORKING WITH SEX OFFENDERS AND THEIR VICTIMS, I WILL BRIEFLY DESCRIBE A PROBLEM CREATED BY THE SALES OF SOFT AND HARD CORE PORNOGRAPHY.

THE BASIC PROBLEM IS THAT ALL FORMS OF PORNOGRAPHY AND OBSCENITY FALLS INTO THE HANDS OF MINORS--AND THUS ANY LEGISLATION MUST TAKE THAT INTO ACCOUNT. FORGET X-RATED VIDEOS ARE CLEARLY AND POWERFULLY HARMFUL TO ADULT RELATIONSHIPS AND ARE PROVEN TO CAUSE THE EXPLOITATION AND RAPE OF WOMEN.

BOTH SOFT CORE(PORNOGRAPHY) AND HARD CORE(OBSENITY) IS OF CONCERN BECAUSE RELIABLE ESTIMATES SUGGEST THAT OVER 50% OF IT IS SEEN BY MINORS (IF YOU'RE INTERESTED, MONTANA CITIZENS FOR DECENCY THROUGH LAW HAS THE DATA).

WHICH CHILDREN SEE THE PORNOGRAPHY? IT SEEMS TO BE WITHOUT DISTINCTION FOR CLASS AND CIRCUMSTANCE. I HAVE HAD STRUGGLING SINGLE PARENTS AS WELL AS MINISTERS BRING ME THE PORNOGRAPHY THEIR CHILDREN HAVE OBTAINED. RECENT EXAMPLES ARE MAGAZINES HAVING STRONG ENCOURAGEMENT (AS WELL AS ADVERTISEMENTS) FOR SEX BETWEEN MULTIPLE COUPLES, ADVERTISEMENTS FOR MULTIPLE FAMILY SEX, ENCOURAGEMENT FOR HOMOSEXUALITY (MALE AND FEMALE) AND OTHER DIVERSIONS/PERVERSIONS SUCH AS SODOMY AND BEASTIALITY.

WHERE DO CHILDREN GET PORNOGRAPHY / OBSCENITY? IT ORIGINATES IN MAIL ORDER CATALOGUES (INCLUDING DISCOUNT BOOK CATALOGUES WHICH NOW ALSO SELL X-RATED VIDEOS), GAS STATIONS, VIDEOS RENTAL STORES, AND BY SUBSCRIPTION (IT'S A BIG MONEY MAKER SO YOU CAN EXPECT A LOT OF OPPOSITION TO REGULATING IT). IT THEN GETS TO CHILDREN: 1. BY DIRECT SALE TO OLDER MINORS AND YOUNG ADULTS 2. TEENAGERS WHO MAKE A BUSINESS BY RUMMAGING THROUGH THE TRASH FROM SUBSCRIBERS HOMES, 3. BY ADULTS CARELESSLY LEAVING IT IN THEIR VIDEO MACHINES OR MISGUIDEDLY USING IT AS A RITE OF PASSAGE AT SIXTEENTH BIRTHDAY PARTIES, AND 4. BY ADULTS WHO CLEARLY INTEND TO SEXUALLY VICTIMIZE THEM IN AN IMMINENT SENSE.

THROUGH MY COUNSELING PRACTICE I KNOW EXPOSURE TO THESE MATERIALS CAUSES LONG TERM, TENACIOUS DAMAGE TO YOUNG MINDS--AND SUCH EXPOSURE OCCURS FREQUENTLY ENOUGH THAT WE NEED LAWS TO REGULATE THE AVAILABILITY OF SOFT CORE PORNOGRAPHY AND ELIMINATE THE PRESENCE OF OBSCENITY WHICH HAS SUCH A DECIDEDLY ADVERSE EFFECT ON CHILDREN AS WELL AS ADULTS.

YOU HAVE AN UNIQUE OPPORTUNITY TO PREVENT THE TRAGEDIES I SEE EACH WEEK: 1. A BOY ADDICTED TO PORNOGRAPHY SINCE HE WAS THIRTEEN, 2. A YOUNG MAN WHO STARTED OUT HETEROSEXUAL WHO BECAME HOMOSEXUAL AND OBSESSED WITH MALE GENITALS THROUGH X-RATED VIDEOS AND COIN-OPERATED VIDEO BOOTHS, 3. A GIRL WHO WAS TAUGHT TO HAVE INTERCOURSE THROUGH PORNOGRAPHY, 4. A MAN WHO HAD INTERCOURSE WITH HIS THIRTEEN YEAR OLD DAUGHTER WITH THE ENCOURAGEMENT OF A SOFTCORE MAGAZINE "LETTER", 5. A MAN WHO WAS HELPED TO HAVE MORE AND MORE DEVIANT FANTASIES BY PORNOGRAPHY, UNTIL HE MOLESTED AND THEN MURDERED A YOUNG BOY.

DOES NOT HUMAN DECENCY AND THE PROTECTION OF CHILDREN DEMAND LEGISLATION?

EXHIBIT 34
DATE 3-21-89
HB SB's 263, 307, 342

P. O. Box 20
Libby, Montana 59923
March 20, 1989

Judiciary Committee
House of Representatives
Capitol Station
Helena, Montana 59601

Dear Representatives:

In the city of Libby, we have had obscenity laws since 1979 that are comparable to the ones you are now considering for the state.

The following titles of books are found in our local book store. These books have not been adversely effected by these laws. On the contrary, these books are protected by the laws.

The New Our Bodies Ourselves by various women
A Young Man's Guide to Sex by Jay Gale
A Young Woman's Guide to Sex by Jay Gale
The Joy of Sex by Alex Comfort
More Joy of Sex by Alex Comfort
Girls and Sex by Pomeroy
Love and Sex by Johnson
Good Girls, Bad Girls by Laurie Bell
Women and Love by Shere Hite
Growing Up Feeling Good by Waxman

Please pass these laws to define "obscenity." Then the books listed above and other fine books will be protected throughout our state.

Thank you,
Tracy M. Graham
Tracy M. Graham
Voter

western montana regional community
MENTAL HEALTH CENTER

EXHIBIT 35
DATE 3-21-89
HB SB'S 263, 307, 342

15 Airfield Road
Libby, Montana 59923

March 20, 1989

TO: Senators/Representatives/Committees concerned with Pornography issues

FROM: Joanne Serna, M.S.W.
Psychiatric Social Worker

RE: Request that you support pornography bills

In my work as a clinician with Western Montana Regional Community Mental Health Center, I work almost daily with clients who have been exposed to sexual abuse. I can not describe adequately the destruction sexual abuse brings to the lives of those affected by it. In a majority of the cases I have seen, pornography has been an issue. Unless we as a society, you as lawmakers are willing to take a stand and change our attitudes and laws about pornography, we are choosing to allow destruction to victims by our inaction. From one who works on the front lines with victims of sexual abuse, I urge you to support the pornography bills before you.

JES/rjr

DATE 3-21-89
HB SB'S 263, 307, 342

NATIONAL CONGRESS OF PARENTS AND TEACHERS

NEWMAN ELEMENTARY SCHOOL
605 SO. BILLINGS BLVD.
BILLINGS, MONTANA 59101
PHONE ~~XXXXXXXXX~~ 252-3100

NEWMAN SCHOOL
MUSTANGS

March, 1989

To the members of the House Judiciary Committee:

On behalf of Newman School PTA and its 155 members, I am writing this to ask for your support of the following legislation:

S.B. #307 -- Obscenity Law
S.B. #342 -- Harmful to Minors Law
S.B. #263 -- Commercial Nudity Law

One of the objects of PTA is "to secure adequate laws for the care and protection of children and youth". We believe that these bills will help protect our children from exploitation and harm. We do not believe that these bills will restrict our freedom of speech nor lead to censorship of materials that have literary, artistic or scientific value.

In our society today, children are increasingly becoming the victims of abuse of all kinds, physical, emotional and physical. Growing evidence has shown that pornography has been involved in these types of crimes. It is time to put a stop to this abuse and for us to invest in our future-- OUR CHILDREN! Let's begin by providing for them a safe environment to grow and learn in.

We want to thank you for your hard work and help in this matter.

Sincerely,

Floy Scott

Floy Scott, President
Newman School PTA

EXHIBIT 37
DATE 3-21-89
HSB'S 263, 307, 342

The Phyllis Schlafly Report

VOL. 22, NO. 7, SECTION 2 | BOX 618, ALTON, ILLINOIS 62002 | FEBRUARY, 1989

A Look at the Mind of a Pornography Addict

Ted Bundy, one of the most notorious serial killers in recent times, was electrocuted in Starke, Florida, on the morning of January 24, 1989. He had confessed to the murders of 23 young women; some believe that he took the lives of as many as 36. He was executed for the 1978 murder of a 12-year-old schoolgirl, whom he killed three weeks after he murdered two Florida State University students as they slept in their beds in a Chi Omega sorority house in Tallahassee. He was found guilty of the murder of the sorority girls in 1979 and convicted of murdering the 12-year-old in 1980. He became the country's most famous death-row inmate.

Bundy confessed to the murders only after it became clear that his court appeals were running out and his days were numbered. All his victims were pretty girls, mostly between the ages of 17 and 24, whom Bundy sexually abused and mutilated before disposing of their bodies. Most of the murders took place in Western states — Washington, Utah, Idaho, and Colorado — in the mid-1970s.

On the day before his execution, Ted Bundy requested an interview with the well-known psychologist and radio counselor, Dr. James Dobson, who had served as a member of the 1985-1986 Attorney General's Commission on Pornography. Dr. Dobson's half-hour interview with Bundy offers a remarkable insight into the mind of the handsome 42-year-old former Boy Scout and former law student who had embarked on his vicious killings about the age of 28. Bundy's words were spoken by a man who was looking death in the face. He was executed a few hours after the interview was recorded. Outside the prison, hundreds of people cheered his death and the usual protesters against capital punishment were not very visible or vocal.

The following transcript of the Dobson-Bundy interview is reprinted by permission. Copyright © 1989 by Focus on the Family.

Dobson: Ted, it is about 2:30 in the afternoon. You are scheduled to be executed tomorrow morning at 7 o'clock, if you don't receive another stay. What is going through your mind? What thoughts have you had in these last few days?

Bundy: I won't kid you to say that it's something that I feel that I am in control of, or something that I have come to terms with, because I haven't. It is a moment by moment thing. Sometimes I feel very tranquil and other times I don't feel tranquil at all. What's going through my mind right now is to use the minutes and hours I have left as fruitfully as possible and see what happens. It helps to live in the moment in the essence that we use it productively. Right now I'm feeling calm in large part because I'm here with you.

Dobson: For the record, you are guilty of killing many women and girls. Is that correct?

Bundy: Yes. Yes, that's true.

Dobson: Ted, how did it happen? Take me back. What are the antecedents of the behavior that we've seen? So much grief, so much sorrow, so much pain for so many people. Where did it start, how did this moment come about?

Bundy: That's the question of the hour and one that not only people much more intelligent than I will be working on for years but one that I've been working on for years and trying to understand. Is there enough time to explain it all? I don't know. I think I understand it, though, what happened to me to the extent that I can see how certain feelings and ideas have developed in me, to the point that I began to act out certain very violent and very destructive feelings.

Dobson: Let's go back then to those roots. First of all, as I understand it, you were raised in what you considered to have been a healthy home. You were not physically abused, you were not sexually abused, you were not emotionally abused.

Bundy: No. No way. And that's part of the tragedy of this whole situation. Because I grew up in a wonderful home with two dedicated and loving parents, one of five brothers and sisters, a home where we as children were the focus of my parents' lives, where we regularly attended church, two Christian parents who did not drink, they did not smoke, there was no gambling, there was no physical abuse, or fighting in the home. I'm not saying this was "Leave It To Beaver."

Dobson: It wasn't a perfect home.

Bundy: No, I don't know if such a home exists, but it was

April 8, 1989.

EXHIBIT 37
DATE 3-21-89
HB SB's 263, 307, 342

The House Judiciary Committee:

Regarding the three Pornography Laws, S.B. #307, S.B. #342, S.B. #263, we enclose the interview of Ted Bundy, with Dr. James Dobson, and you will read from the Condemmend man, how Pornography Grasped his mind, to kill for sex. One Can only thank this Ted Bundy, for telling we parents, how innocently it all started.

Our young must be protected from the display, and easy obtainability of such, beastial use of the bodies of our young, before we have more Ted Bundys.

Respectfully,

Pete & Milly May.

Box 34

Babb, MT 59411

March 30, 1989

EXHIBIT 38
DATE 3-21-89
HB SB's 263, 307, 342

Dear Legislators;

I have been following your Controversy over banning hard-Core pornography, and decided to send you a recent letter from Dr. James Dobson, from Focus on the Family. He was asked to interview Ted Bundy before he was executed, by Ted Bundy himself. Ted Bundy wanted to make a statement to the public on the influence that pornography had had on him.

I believe that we have to draw a line, and set good standards. Our laws should protect the people, and I feel that we must discriminate against things that are definitely evil. It was once said, "America is great, because America is good." If America ceases to be good,

America will cease to be great.
Let us in Montana set an example
for other states and repress evil.

Sincerely,

Pat Schaessler
1331 Whispering Pines Cir.
Billings, Mt. 59101

EXHIBIT 58
DATE 3-21-89
HSSB'S 263, 307, 312

February 28, 1989

Dear Friend,

There are times in every Christian endeavor when its leaders become intensely aware of their need for prayer and divine guidance. Such a moment has arrived for those of us who direct the ministry known as Focus on the Family. These past few weeks have been especially difficult for our team here in Pomona, and we need our good friends around the world to hold our names and our cause before the Lord. I hope you will covenant with us to bathe this work in prayer during the weeks ahead.

Several circumstances account for the unusual level of stress that we feel at this time. At the top of that list, of course, is the continuing fallout from my interview with confessed serial killer Theodore "Ted" Bundy. Since many in the press and the media seem determined to distort the truth and discredit both the message and the messenger, it is important to me that *you*, at least, understand what really happened in Florida on January 23.

First, I did not ask to interview Ted Bundy during that last week of his life. Rather, I was contacted by him in December 1986 through our mutual friend, John Tanner. Mr. and Mrs. Tanner spent more than 200 hours ministering to Bundy in prison over a period of years. The Tanners are among the most caring people I've ever met, and yet they have been persecuted by the Florida press for daring to talk to a murderer about Jesus Christ. John has recently been elected as Florida's State Attorney of the Seventh Judicial Circuit, which makes him even more vulnerable to criticism. He has been accused of motives that exist only in the minds of his critics. I can tell you with confidence that Bundy would never have confessed and given specific information regarding the murders he committed if it had not been for the patient, Christian love shown to him by the Tanner family. If you live in Florida, I hope you'll write Governor Robert Martinez and tell him you appreciate their courage and commitment.

Anyway, John called 27 months ago to say that Bundy wanted to confess at some point, and that when he did, he planned to make a statement about the role played by pornography in his life. Contrary to what you may have read in the newspapers, Bundy's emotional warnings about the dangers of obscenity represented no last-minute "deathbed" effort to transfer blame for the murders he had committed. He wrote me a nine-page letter in August 1988, in which he revealed his considerable knowledge of pornography as a curse on society. He had read the entire 2,000-page report of the Attorney General's Commission on Pornography, and he was familiar with other scientific literature on this subject. His concern was genuine, and he was determined to make a statement to the world about his own tragic experiences.

But why did Bundy choose to convey that message through me? Because he knew the press would not permit his views to reach the people. There is *no* subject that agitates news reporters and talk show hosts more than the link between sexual violence in the media and violence against women and children. Billions of dollars are generated on television and in print by the depiction and exploitation of violence. That colossal source of revenue is protected with vengeance by those who profit most from it. The news media is also highly motivated to guard against any threat to their First Amendment rights, which is understandable. However, at times they appear almost paranoid, fearing a rising tide of censorship that does not exist. At least, that is the way I interpret their emotional reaction to the Bundy interview.

EXHIBIT 39
DATE 3-21-89
HB SB's 307, 263, 3

1 of 3

A PETITION TO THE HOUSE JUDICIARY COMMITTEE

Believing that pornography destroys the moral fabric of our country; promotes violent sexual behavior; is degrading in its depiction of normal sex; and involves sexual abuse of real children; we ask that you, as the House Judiciary Committee, send SB 307, 342, & 263 (Senator Sam Hoffman's pornography bills) to the full House with your approval. We also ask that these three bills not be altered in any way from their present form.

1. Sylvester W. Schindler
2. Gregory M. Powell 522 W. Erie, Lewistown MT
3. Bill Goold 212 W Corcoran " "
4. Sherri Goold 212 W. Corcoran Lewistown Mt.
5. Bonita J Powell 522 W. Erie, Lewistown, MT
6. Charles Vaughn 132 A St. Lewistown,
7. Nina Chapman 924 W Spring Lewistown MT
8. Mary Dehmer 120 Agate Dr.
9. Karen Seifert 500 Meadowlark Lane Lewistown, MT
10. Betty Wilcoxon Heath Star Rt Lewistown MT.
11. Betty Lou Sweeting Heath S R Lewistown
12. Donald L Anderson Route 2 Box 2236 Lewistown MT
13. Lynda K Anderson Route 2, Box 2236, Lewistown, MT.
14. John H Williams Heath Rt. Lewistown, mt
15. John S Sweet Mid Edge RT #66 Lewistown, mt
16. Sue L Hartley 1115 W Main Lewistown
17. Randy Bush 802 W Blvd Lewistown mt
18. Gwen L Kish 802 W. BLVd ~~Lewistown~~ Lewistown Mt.
19. Jim Croom P.O. Box 53 Judith Gap
20. Tom Gill 5175 High St Lewistown, Mt

EXHIBIT 39
DATE 3-21-89
HB SB'S 263, 307, 342
2 of 3

A PETITION TO THE HOUSE JUDICIARY COMMITTEE

Believing that pornography destroys the moral fabric of our country; promotes violent sexual behavior; is degrading in its depiction of normal sex; and involves sexual abuse of real children; we ask that you, as the House Judiciary Committee, send SB 307, 342, & 263 (Senator Sam Hoffman's pornography bills) to the full House with your approval. We also ask that these three bills not be altered in any way from their present form.

1. James E Mammen 229 S W Ash Lewistown Mt 59457
2. Donald J. Jude 129 Sunset " " "
3. Lois C. Fry 501 E. Washington Lewistown MT 59457
4. Grace Wadley 602 W. Erie Lewistown Mt.
5. Ardys Bahm 1124 W Broadway Lewistown, MT 59457
6. Lauretta Gill 901 N Evelyn Lewistown, MT 59457
7. Elizabeth Mammen 229 S.W. Ash Lewistown, Mt. 59457
8. Cynthia Ann Jude 129 Sunset Lewistown, MT. 59457
9. Lowell E Fry 211 Elm Lewistown MT 59457
10. L. Marjorie Fry 211 Elm " " "
11. Gayle Hull 501 E. Washington Lewistown MT 59457
12. Beulah Spaulding 1216 W Blvd. Lewistown, Mt. 59457
13. Otto H Kliever SR 266 Box 43 Fraser, MT 59225
14. Telah B. Kliever SR 266-Box 43 Fraser, Mt. 59225
15. Dennis Seyfert 500 Meadowlard lane Lewistown, MT 59457
16. _____
17. _____
18. _____
19. _____
20. _____

EXHIBIT 39
DATE 3-21-89
HB SB's 263-307-3
343

A PETITION TO THE HOUSE JUDICIARY COMMITTEE

Believing that pornography destroys the moral fabric of our country; promotes violent sexual behavior; is degrading in its depiction of normal sex; and involves sexual abuse of real children; we ask that you, as the House Judiciary Committee, send SB 307, 342, & 263 (Senator Sam Hoffman's pornography bills) to the full House with your approval. We also ask that these three bills not be altered in any way from their present form.

1. Patricia Zackus 400 Park Ave Lewistown, Mt.
2. Irene Vaughan 1324 St Lewistown,
3. Karen Strom PO Box 53 Judith Gap, Mt 59453
4. Mary Jean Ireland Gilt Edge Rt Box 4065 Lewistown, Mt. 59457
5. Tracy L. Ireland Gilt Edge Rt Box 4065 Lewistown, Mt. 59457
6.
7.
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20.

EXHIBIT 40
DATE 3-21-89
HB SB's 263, 307, 342

TERRY'S THEATRES

Peyton & Connie
Terry

MONTANA HOUSE JUDICIARY COMMITTEE

For the record, I am Peyton Terry, President of the Montana Association of Theater Owners. My wife and I have owned and operated a twin auditorium family theater in Glasgow for the past nineteen years. In all those years we have never shown an X-rated movie. ~~Also before any outside pressure was ever brought to bear, we chose not to show the highly controversial films "The Exorcist" or "The Last Temptation of Christ".~~ Senate Bill's 307 and 342 I am sure are well intentioned and aimed at outlawing hard core pornography. However, the way these bills are written, they could, in effect, force the closure of every theater in this great state. We feel they constitute undue harrassment and discrimination against legitimate theater owners. We have always adhered strictly to the M. P. A. A. ratings of G, PG, PG13, and R. At R rated movies anyone whose age is in doubt is required to show I.D., driver's license etc. If they are under seventeen, parents are required to accompany them. We strongly urge you to exempt legitimate theater owners who are guided by the M. P. A. A. rating system. The Montana Association of Theater Owners heartily endorse the amendment presented by Representative Daily.

Sincerely,

Peyton Terry

Peyton Terry, President
Montana Association of Theatre Owners

TESTIMONY OF CHARLES W. WALK, EXECUTIVE DIRECTOR OF THE MONTANA NEWSPAPER ASSOCIATION, BEFORE THE HOUSE JUDICIARY COMMITTEE ON SB 307 AND SB 342 ON MARCH 21, 1989.

Mr. Chairman, members of the committee, for the record my name is Charles W. Walk. I am executive director of the Montana Newspaper Association, which includes in its membership all 11 daily newspapers and 65 of the weekly newspapers in Montana.

I am here today to oppose both SB 307 and SB 342. Because my testimony in opposition to both bills would be very similar, with the chairman's approval I will give oral testimony on this bill and ask that it also be included in the record as being in opposition to the other bill as well.

Before beginning my reasons for this opposition, however, I would like to assure members of this committee that Montana's newspapers never have been, are not now and do not plan to be in the future purveyors of obscenity or pornography.

But, these newspapers are, have been and will continue to be one of the bricks in the foundation for the protection of freedom of expression in this state. It is in this role as protector of a free society that we appear here today.

Our opposition to SB 307 and SB 342 is based on several points.

First, we believe the bills are vague and too broad to accomplish their rather pointed legislative goals. They would, for all reasonable purposes, result in the potential censorship of books, records, tapes, compact discs, videotapes, live performances, motion pictures, posters, pamphlets, prints, photographs, magazines and, yes, even newspapers.

Language in SB 342 includes such phrases as "harmful to minors." This may be very high-sounding, catchy and popular, but it is so vague as to be meaningless in the truest sense of the word.

Language such as "predominant tendency" is also so broad that it defies any reasonable interpretation or even understanding by the persons the legislation asks to establish and comprehend those "contemporary community standards."

We are not being picky about the wordage of the bills just to be difficult. Instead, we are pointing out some of the most flagrant examples of the broadness and vagueness of the bills.

(over)

EXHIBIT 41
DATE 3-21-89
HB SB's 263, 307, 342

We are not here today to hide behind the First Amendment. We understand that obscenity falls outside the pure protection of the First Amendment and that the Supreme Court has permitted regulation of the sale and distriubution of obscene material.

And we are not here today to bash the proponents of the bills being debated. They are heading in a direction which they believe is right and important. We disagree with the thrust of the legislation on the basis that it is unnecessary and too broad and could be the biggest nose any camel tried to thrust under the tent of free expression.

We urge the committee to give both bills a "do not pass" recommendation.

Thank you.

DATE 3-21-89
H/SSB'S 263, 307, 342

My name is Bonnie Steel. My husband Ian and I own and operate two video rental stores in Helena. If Senate Bill 307 were to become law we would be forced to close our stores.

As this law reads all R, most PG 13, and some PG films could be judged obscene. We would not know what films we could continue to stock what new films we could purchase. The list of films we could legally stock would be so limited customers would soon loose interest in video. In short, our business would fail and we would to forced to close our doors.

Most video stores in the state are locally owned. These stores pay a lot of taxes. They employ local people, often high school and college kids. All of this income would be lost to the state and communities.

Local owners care about their communities and carefully screen customers so adult content movies are not rented to minors.

If you drive out legitimate video stores you will leave an open invitation to illegal smut peddlers, to operate in our communities. These people will rent or sell to anyone with the money. They will not pay their share of taxes and hopefully will not employ our teenagers.

Respectfully submitted by
Bonnie Steel
Co/Owner Video Excitement Helena Mt.

DATE 3-21-89
HB SB's 263, 307, 342

BARRY FERST, PH.D.
Associate Professor of Philosophy
Carroll College
Helena, Montana

March 21, 1989

Testimony against:
A. Senate Bill No. 342: "An Act to Prohibit the Display and Dissemination of Material Harmful to Minors...."
B. Senate Bill No. 307: "An Act Prohibiting a Person From Exhibiting or Disseminating Obscenity to Any Person Regardless of Age...."

Regarding Bills No. 307 and No. 342, I find myself asking if the Montana legislature really wishes to make laws that would take from parents the right to provide parental guidance? In Montana, where the government's control over the lives of individual citizens has been kept to a minimum, could Bills such as those being considered today be the beginning point for destroying this ideal of individual freedoms? I ask these questions because I am a professor at Carroll College with an expertise in political philosophy.

I would like to suggest that it is altogether possible that Bills such as No. 307 and No. 342 will hurt conscientious parents, while serving only those parents who want to abdicate their role of bringing up their own children. A state government must consider very seriously the thinking of those parents who are not able to nuture, guide, and take responsibility for their own off-spring, and who believe that the police and law courts can do their job for them or at least will make their job easier.

I ask again does our State really want to become surrogate parents, deciding what children should read, what they should see, to what they should listen, where they should go, and finally how they should spend their days? On the philosophical level, Bills such as those before you today, are the steps one takes to undermine the free and tolerant and loving society that Washington, Jefferson and so many others envisioned. On a very practical level, are not our law courts, police, and social agencies already over-burdened? Should legislation now require that law courts and social agencies become surrogate parents, too?

The American representative democracy and the State of Montana is not in the business of telling 16 year olds who often want to act like adults, or 56 year olds who might enjoy acting like teenagers every now again, what shows they can watch or books they can read. The state's machinery cannot take the place of a mother and father's love. A love most parents express very well.

end

Barry Ferst

EXHIBIT 44
DATE 3-21-89
HB SB's 263, 307, 342

Mark T. Watkins
Freddy's Feed And Read
1221 Helen Avenue
Missoula, MT 59801

March 21, 1989

House Judiciary Committee

My name is Mark Watkins. I am co-owner of Freddy's Feed and Read, an independent trade bookstore operating in Missoula since 1972. I have been in the book buisness for 9 years. I am strongly opposed to Senate Bills 307 and 342 and I would like to offer a bookseller's perspective on them.

The First Amendment guarantees our most basic right, that of free expression and open access to ideas. Without the ability to openly communicate, question, and learn, all of our other rights would crumble. In a pluralistic society, censorship of ideas we find hateful can be a strong temptation. Such temptation must be resisted, for free speech is a requisite for the maintenance of a free society.

I believe that if Senate Bills 307 and 342 are passed, they will lead to censorship in Montana. Specifically, they will limit the availability of books and magazines with non-obscene sexual content. As a bookseller, I must choose from the thousands of new titles available to me each month. Obviously I can not review each book with an eye toward screening for "obscenity". The definition of "obscenity" in these proposed bills is extremely vague. How am I to determine "the average person", measure "contemporary community standards" or judge "literary, artistic, or scientific standards"? Given these overwhelming uncertainties, and the severe penalties dictated for violation of this legislation, I would tend to act with great caution and not order anything for my bookstore that might appear controversial. I would be forced to censor many constitutionally protected, non-obscene books.

Senate Bill 342 presents further difficulties for a bookseller. Again, I am concerned with the vague definitions involved. I am particularly intrigued by the phrase, "harmful to minors". It strikes me that "harmful to minors" in essence, must mean "nearly obscene". But with the definition of obscenity itself so unclear, how am I to further determine what is "nearly obscene"? A generous application of this term could mean that perhaps 50% of the material in my store would be found to be "harmful to minors". What am I to do with this half of my

stock? I can not cordon it off or remove it from display because this would result in restriction of adult access to constitutionally protected material. If I ban minors from my store entirely, I infringe upon their First Amendment right to peruse what is not "harmful" to them. Senate Bill 342 additionally complicates the bookseller's task by failing to specify which minors are to be kept from what "harmful" material. Which minors does this bill refer to? Three year old children, 11 year old pre-adolescents, and 17 year old, unmarried teenagers vary greatly in terms of what is "harmful" to them. Yet they are all minors under the law. To avoid prosecution and/or fines, I would have to "sanitize" my bookstore entirely, thereby self-censoring and offering my customers only those materials suitable for the youngest reader.

The proponents of SB 307 and SB 342, including some of the Judiciary members that I have talked with, maintain that booksellers are misinformed and overreacting. They say I have nothing to fear because they "aren't going after the average bookstore," and they don't intend to "ban the world's classics". Frankly, I am not comforted by their admonitions, and I don't share in their naivete. Censorship is already alive and well in the United States. Library and school administrators can give countless examples; let me give some from the book business.

--The state of Georgia passed a minor's access law, similar to our SB 342, which was eventually declared unconstitutional. However, before the law was tested in the courts, a leading Atlanta departmentstore,"actually stopped ordering all new titles from all publishers," (Anthony Schulte, vice president of Random House, in The Meese Commission Exposed). So here we have an example of a well-established bookseller self-censoring rather than risking the penalties of obscenity legislation.

--"Well reviewed sex education books, intended for teenage audiences, are often stocked in a back room or under a counter after a visit from a well-meaning police officer, citizens group, or minister." (Maxwell Lillienstein, legal counsel to the American Booksellers Association, in The Meese Commission Exposed). Thus, non-obscene, constitutionally protected material is made inaccessible to minors and adults.

I can further give examples of informal, vigilante-type censorship taking place in my own bookstore. On occaision, I have found that books containing sexually explicit passages have been altered or damaged to demonstrate the self-styled censor's apparent displeasure with the material. I have also been directly confronted by hostile coustomers who challenge the presence of certain books in my store. Please note that these people weren't challenging "hard-core" pornography

DATE 3-21-89
HB SB's 263, 307, 342

or even "soft-core" magazines such as Playboy. I don't carry these materials. The customers were offended by constitutionally protected titles in the subject areas of women's health, human sexuality, and contemporary fiction.

I believe that these examples demonstrate that there are people, uncomfortable with a frank depiction or discussion of sex, that will use this legislation as a weapon to attack material they find personally unpalatable--regardless of its standing under the First Amendment. I would like to further point out that such people would not have to be successful in a legal suit to achieve their ends. Even to be accused of selling obscenity could cause a bookseller to be ostracized by his or her community, and to increasingly self-censor controversial material.

I fail to see how Montana will gain anything positive from this legislation. I only see a rising tide of censorship. I urge you to kill Senate Bills 307 and 342.

Thank you -

Mark T. Watkins

Turning Point
Center for Psychotherapy and Self-Discovery

REVEL MILLER, PhD
ANNE M. PINCUS, PhD
Clinical Psychologists
414 North Benton Avenue
Helena, Montana 59601
(406) 443-4211

EXHIBIT 45
DATE 3-21-89
HB SB's 263, 307, 342

Chairman Brown, Members of the Committee:

I am Dr. Anne Pincus, a Licensed Clinical Psychologist in Helena. Among my clients are numerous adolescents and child victims of sexual abuse. I come here today both as clinician and social scientist, and as a firm supporter of First Amendment Rights. I am an individual who treasures the freedom of expression available in this country that enables us to enjoy good literature, art and film. I oppose SB 307 and SB 342 for these reasons.

My point today is that it is simply dishonest, unethical and unscientific to state that overt sexual materials or erotica (defined in the proposed laws as obscenity or pornography) cause or in any statistically significant manner contribute to violent sexual crimes.

No positive correlation between the two (pornography and rape, for example) has been shown to exist in any data, including that documented by the Meese Commission. In fact a negative (reverse pairing) correlation seems to exist.

And above all, correlation (association in time) does not indicate cause!

Please, let us review the data available with honesty and let us not substitute our own value judgments and personal assumptions for the scientific conclusions which may or may not support our beliefs.

Sincerely,
Anne M. Pincus, PhD

EXHIBIT 45
DATE 3-21-89
HB SB's 263, 307, 342

RE: SB 307 and SB 342

(House Judiciary Rm 312)

Outline (approximately 5 minutes)

RE: Effects of "pornography" on sexual offenses/offenders

DEFINITIONS:

pornography: depictions of nonconsensual, coersive sexual activities

versus --

erotica: depictions of consensual sexual activities

While I am not an expert in the field of sexual deviance, as a Licensed Clinical Psychologist, trained in research design and methodology, I present today the conclusions of other social scientists and clinicians with whom I have personally consulted or whose work I have read.

First . . .

1. Across the board -- no significant positive correlations have been shown to exist between erotica (overtly sexual material) and the offenders who commit/or the comission of sexually violent crimes. Even the Meese Commission acknowledges this.

2. In fact, apparently, actual negative correlations (that is, not only no pairing, but a reverse pairing in opposite directions) exists between availability / use of erotica and frequency of occurence of sexual violence.

Cite: case of Denmark, a country where all anti-pornography laws were repealed in the mid 1960's, and where rape and other sexual offenses showed a significant decrease in the years following the repeal.

Cite: West Germany, a similar case where the rape rate remained constant, while all other violent crimes increased after a change in the law in the early 1970's.

Statistical changes in the opposite direction were noted in many U.S. cities which have taken different stands on this question.

3. The above two conclusions should not be at all surprising if we remember that rape and other sexual offenses are essentially crimes whose common denominator is violence, not sex. I refer you to the well-known writings of Nick Groth and others who are experts on rape.

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HB SB'S 263, 307, 342

4. Moreover, even if positive correlation could be shown, i.e. if men who read pornography could be shown to be more prone to sexual violence, such correlation in no way suggests causality, as I'm sure we all know from basic courses in statistics.

eg: assertion that "Kids with bigger feet are better readers."

Therefore, correlational evidence does not prove anything . . . ~~the~~ frequency ~~of~~ two phenomena ~~that~~ are both caused by a third phenomena (e.g. age of kids with big feet etc.)

. . . the mere fact that one act occurs after another dosn't mean the first caused the second.

5. The worst we might conclude from a scientific perspective:

pornography (as I defined above):

- seems to be correlated with continuing deviant sexual interest;
- appears to reinforce deviant sexual interest.

But the interest does not cause or necessarily lead to the behavior, act or crime.

In fact, pornography used by sexual offenders seems to lessen likelihood of sexual violence -- for a while, because of release attained through orgasm during masturbation w/use of pornography

(see attached article: Dr. Abel, Emory U.)

6. For the above purposes, I am told by a local expert who works w/ sexual offenders, Sears Catalogs also apparently work just great . . . you may draw your own conclusions at this point.

Thank you.

7. (if time) several experts have suggested:

Likelihood, repression of normal sexual expression, appreciation & education → deviance

(if) porn = symptom of greater problem which is repression in society ∴ lack of available of normal sexual ~~education~~ etc

which further attempts at legislating morality are only likely to increase!

EXHIBIT 46
DATE 3-21-89
H/ SB'S 263, 307, 342

The Bookstore
26 North Idaho St.
Dillon, MT 59725

Chairman Brown and members of the House Judiciary Committee:

My name is Pat Blade. My husband Art and I have been for 10 years, proprietors of Bookstores in small Montana communities. We sell books to parents, loggers, college professors, students, scientists, ranchers, sheepherders and children. We work to supply the reading interests of this varied group, and are absolutely committed to supporting their right to read that has been protected for over 200 years, by the United States Constitution. SB307 and SB 342 create a serious erosion of these rights.

We especially would appreciate your committees careful regard of legal points offered by Attorney Lillienstein of the American Bookseller's association. They highlight the poorly constructed overbroad wording of the bills. This material has been supplied to you by Mr. Watkins of Missoula.

Thank you.

Recently one day of an attempt to operate our family oriented store within the perimeters of those laws made us realize they would be the end of our bookseller's business.

DATE 3-21-89
HB SBS 263, 307, 34

March 13, 1989

To the Montana House of Representatives Judiciary Committee

My friends:

I have read with care and a certain chill in my heart Senate Bills 307 and 342.

The history of mischief and worse that has been caused by censorship attempts such as these bills is too long to recite here; I trust that your committee is fully aware of the American Library Association's continuous and alarming compilation of book-bannings and other incursions on the freedom to read. Let me simply point out, as a person in the book business--for that is what a writer is--and as a native Montanan who has spent most of his adult life trying to write lovingly and insightfully about my home state, two of the crippling consequences of legislation such as this.

First, it puts an intolerable burden on booksellers. Theirs is already one of the most difficult of small businesses, and to lay them open to prosecution, by way of what never have been and never will be precisely definable terms such as "community standards" and "obscenity" and "literary significance," is as unfair as prosecuting grocery stores because the boxes of matches they sell could conceivably be used for arson. In Montana's current economic climate, it would be particularly unfortunate to impose legislation that may cause valuable community enterprises--bookstores and newsstands--to abandon or be driven out of business.

Second, bills such as these are loose cannon on the deck; they are loaded with unintended consequences waiting to happen. It is stunning to me that books I have written about Montana may end up banned in my home state, but that is clearly possible under bills such as these. In nearly all my books there are sexual incidents--as there have been in the story of humanity ever since the biblical Song of Solomon, and indeed as there are in the majority of modern literature. Someone, somewhere, is always going to be offended by efforts to portray the sexual side of life, necessary as it is to our understanding of these mysterious beings that are ourselves, and these bills in the hands of such zealots are deadly weapons against writers, booksellers, and

ultimately against readers and a free society. I beg you not to be taken in by the argument, however well-intentioned, that Montana's young people need to have their eyes shielded from the sins of the world; I must tell you frankly that in my own growing up in Montana I read works such as those singled out by this legislation--for I read everything I could put my eyes on--and if those books and magazines had any effect on me, it was to help make me the author of This House of Sky.

As a son of Montana, as a friend of its people, I urge you not to pass these so-called "cures" that are worse than the ailment.

respectfully yours,

Ivan Doig

Ivan Doig

EXHIBIT 48
DATE 3-21-89
H/S SB's 263, 307, 342

500 TRANSWESTERN PLAZA II
490 NORTH 31ST STREET
BILLINGS, MONTANA 59101

March 20, 1989

Mr. David Brown, Chairman
Judiciary Committee
House of Representatives
51st Legislative Assembly
Capitol Station
Helena, Montana 59601

Re: Senate Bill 342 and Senate Bill 307

Dear Mr. Brown:

I am a member of the Board of Directors of the Parmly Billings Library, a joint city/county public library located in Billings, Montana. On behalf of the Board, I have been asked to convey to the Judiciary Committee the opposition of the Board to Senate Bill 307 and Senate Bill 342.

Although obscene materials are not protected by the constitutional guaranties of free speech and press, the United States Supreme Court has articulated the standard by which obscenity must be judged. In 1957, the Supreme Court decided the case of Roth v. United States and stated that the proper test for determining whether material is obscene is if, to the average person applying contemporary community standards, the dominant theme of the material when taken as a whole appeals to prurient interest. In a subsequent case, Jacobellis v. Ohio, decided in 1964, the United States Supreme Court refined this test by stating that if the material has literary, scientific, or artistic value or any other form of social importance the material may not be branded as obscenity and denied constitutional protection. The court suggested in the Jacobellis opinion that work may not be proscribed unless it is "utterly" without social importance.

It has been very difficult for courts and citizens to apply the tests articulated by the United States Supreme Court. The concepts included in the test are subject to a variety of interpretations. Although it is clear that states have the right to prohibit dissemination of obscene materials,

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the legislation directed to that result must be carefully drawn.

It is the opinion of the Board of Directors of Parmly Billings Library that the legislation embodied in Senate Bills 342 and 307 does not properly implement the legislature's right to proscribe the dissemination of obscene materials and these bills should not be passed as written. The Board has the following specific concerns:

1. In Senate Bill 342, a "newsstand" is defined as a stand that distributes or sells newspapers or magazines. All public libraries could fall within this definition with the result that libraries could be subject to criminal prosecution if certain newspapers and magazines are not made unavailable to minors.

2. The definition of "obscenity" in Senate Bill 307 is impermissibly broad. The definition does not contain adequate protection for works which have redeeming social value. The definition contains ambiguities which could permit individuals or special interest groups to try to censor and control the materials made available to the public by libraries.

3. The proposed legislation dramatically alters both the burden of proof to establish criminal conduct and the scope of activities which may be considered criminal. Under the existing statute, § 45-8-201, a person commits the offense of obscenity when "<u>with knowledge of the obscene nature thereof</u>," the person engages in prohibited acts. The proposed legislation removes the requirement that the person must be shown to have had prior knowledge of the obscene nature of the materials being distributed; it will be sufficient to find criminal conduct if the person distributes or deals with materials which are subsequently found to be "obscene" even though the person had no knowledge or intention to distribute such materials.

The effect of Senate Bill 342 and Senate Bill 307 is to place a great burden on public libraries, as well as others, to determine in advance whether materials may fall within the very broad definitions contained in these bills. In addition, this legislation greatly increases the penalties for violations, providing for fines of up to $50,000 and prison terms of up to ten years for second offenses. The in-

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evitable result will be a chilling effect on the public, but particularly on public libraries.

It is not the duty, nor should it be, of public libraries to censor the materials to be made available for circulation to patrons. Obviously, librarians make decisions about what materials should be purchased for circulation. These decisions are based on a number of factors including budgets, purpose of the library, collection development, and the appropriateness of materials. Librarians, more than most, are constantly aware of the pressures brought by special interest groups and others to control and direct the availability of information. Public libraries, perhaps more than any other institutions, have a primary duty to make available the broadest possible range of information and materials. The proposed legislation unnecessarily impedes the ability of public libraries to do so and it should be rejected.

Sincerely yours,

SHERRY SCHEEL MATTEUCCI

SSM/ajr

EXHIBIT 49
DATE 3-21-89
HB SB'S 263, 307, 3

TESTIMONY BEFORE THE JUDICIARY COMMITTEE
Senate Bill 307 and Senate Bill 342
Deborah L. Schlesinger
March 21, 1989

Mr. Chairman, members of the Committee, my name is Deborah Schlesinger, I live in Helena, and I am Legislative Chair of the Montana Library Association. I speak in opposition to SB307 and SB342.

The Montana Library Association views these two bills as bad and unnecessary legislation. The laws already existing on the books at the State and Federal level are adequate and effective. Nothing in Montana is broken - nothing in Montana needs to be fixed. There is no compelling need to change what is already on the books.

These two bills represent censorship and are threats to our First Amendment freedoms. These bills will have a chilling effect on libraries. Most libraries do not discriminate on basis of age. Children are welcome to take any book out of the library because we leave matters of suitability up to parents.

These bills are too broad and pure censorship. We urge you to vote do not pass on both Senate Bill 307 and Senate Bill 342.

THE BILL OF RIGHTS

Passed by Congress, September 25, 1789;
ratified by the States, December 15, 1791.

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Second Amendment

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Third Amendment

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment

No persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a wit[illegible] against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defence.

Seventh Amendment

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Ninth Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, [illegible] the people.

Later Amendments Affecting Civil Liberties

Thirteenth Amendment

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fifteenth Amendment

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Nineteenth Amendment

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Provisions of Article I in the Original Constitution Affecting Civil Liberties

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

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EXHIBIT 52
DATE 3-21-89
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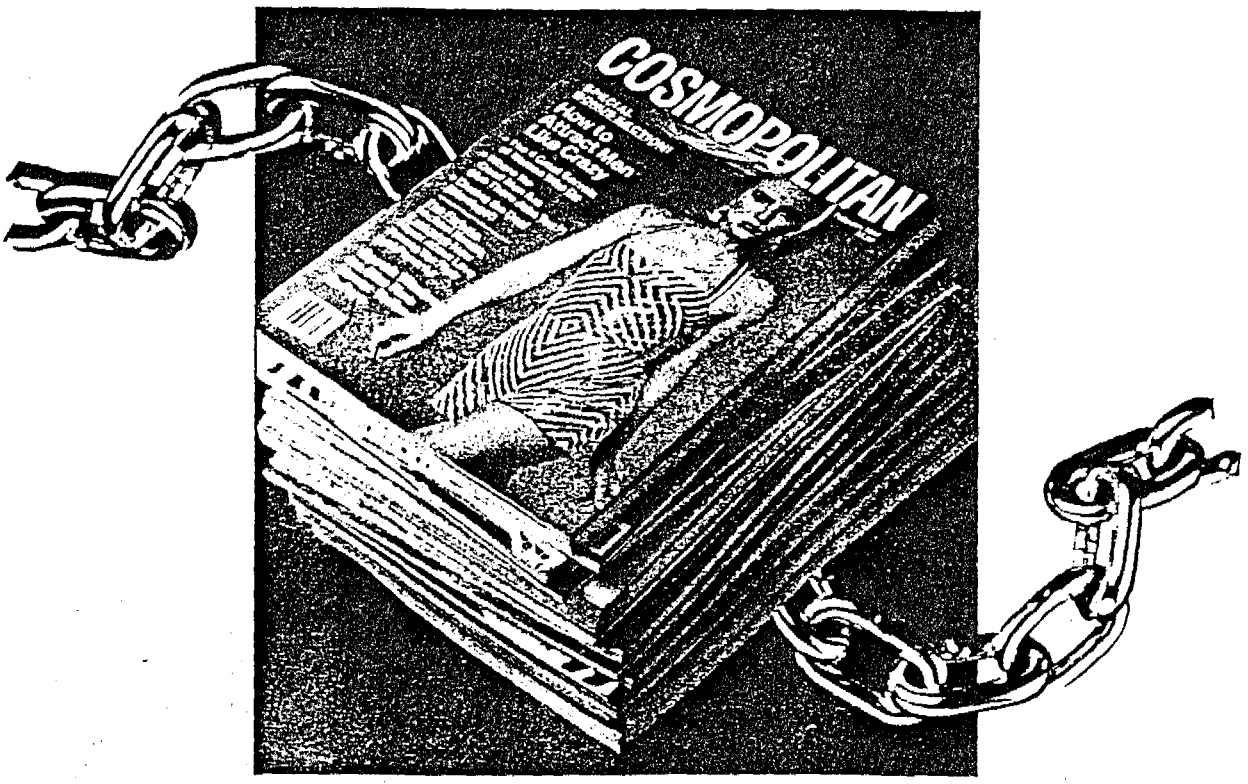
Breaking The Bonds Of Censorship

By Mark V. Hinckley



The censorship fight has moved out of the media arena and into the courts, where the rights and freedoms of Americans are being challenged by a vocal minority.

WE NOW have a new President, a new Cabinet and a new Attorney General, which means we have a chance to tackle the censorship question anew. Even though the threat of censorship has been out of the media spotlight since the downfall of the Bakker and Swaggart ministries, it has continued at an alarming pace. "One of the basic messages that came from the Meese Commission was to decentralize the censorship fight," says Americans For Constitutional Freedom director, Oren Teicher.

Magazine & Bookseller's last feature on this problem was almost two years ago, and unfortunately, some of the predictions we made then have proven accurate. The censorship fight began when 7-Eleven stores removed *Playboy, Penthouse* and other men's sophisticates titles from their shelves—an act that was followed by other chains because of the efforts of vocal groups. Publishers of all different types of magazines were warned that censorship, if allowed to run rampant with sophisticate publications, would spread, eventually cutting into their business. Sadly, this prediction became actuality, when magazines like *Sports Illustrated, Cosmopolitan, Sassy, US, American Photographer, YM, Spin* and other innocuous titles experienced problems with certain issues and had to face the censorship issue. Several mainstream magazines have experienced real problems with censorship, and it will take a concerted effort on all our parts to halt censorship.

Cosmopolitan was removed from some retailer shelves because of an objectionable ad, but according to Hearst's newsstand marketing manager Mitch Halka, "the outlets that removed the magazine have since put it back." It is Halka's belief that the Swaggart and Bakker fiascoes have stripped many censorship advocates of their power to influence retailers.

Diamandis Communications experienced spotty problems in some

Continued ►

chains with certain issues of *American Photographer*. This turned into a permanent delist in those outlets that "only time and the efforts of Warner Publisher Services have been able to rectify," said newsstand manager Peggy Hamilton. Major chains like Grand Union and A&P temporarily delisted this title geared toward the artistry of photography.

Sassy magazine was the focus of censorship groups because it published articles dealing with somewhat mature matters. These groups threatened the c.e.o.'s of *Sassy's* advertisers, retailers and distributors, going so far as to use a cover of the magazine that never appeared on newsstands to have the magazine removed from retailer shelves. In actuality, the magazine was trying to help its readers by making them more aware of the world around them. According to Sandra Yates, president of Matilda Publications, publisher of *Sassy*, "The cost of teen pregnancies in 1987 was $19.27 billion. The objectionable articles are targeted to educate young people to avoid this. Censorship advocates are engaging in a private war, one which now bypasses the media. They are not accountable to anyone save their own membership."

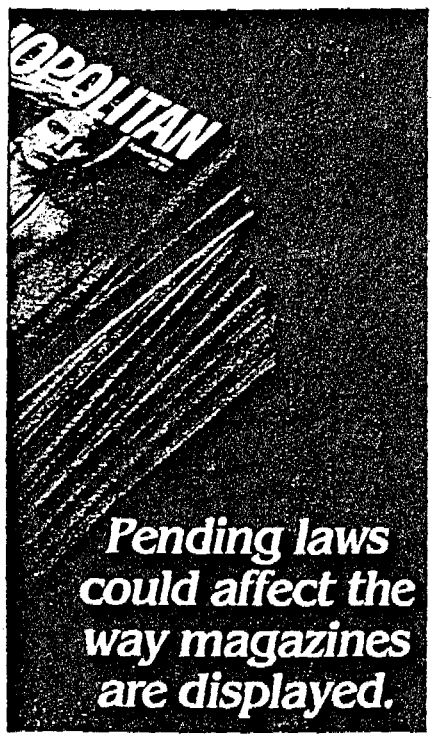
In an effort to support the fight against AIDs, *Spin* magazine included a condom in one of its recent issues, and was subject to temporary delistings and censorship attention. In many cases the condoms were actually removed before the issues were allowed to be put on the newsstand.

A Florida retail chain pulled copies of *US* magazine from its shelves because of "objectionable" pictures of *The Cosby Show's* Lisa Bonet. "They just removed the magazine from the fixture," said *US's* Rich Rhodes. Another chain in Oregon removed the same issue. Rhodes explained that he thought the retailer's reaction was "just being sensitive to their customers." Outside of this incident, *US* has experienced no problems with censorship.

Who are these customers that retailers are being sensitive to?

According to a nationwide survey released by The Conference Board, Americans were asked to rank the relative importance of 18 social and economic problems. So called "pornography" ranked in 16th place, showing how concerned the majority of Americans were with this issue. Why then have magazines come under fire and been removed from retail stores?

Conde' Nast's newsstand manager Michael Garavalia asks another question. Why is it that stores stock products that have the Surgeon General's warning on them, but are asked to remove magazines if someone doesn't like a particular story? He feels that retailers are overreacting because they're scared of losing customers, and with the heated competition between retailers, no one can blame



them. The question arises as to whether they are serving their customers better by choosing what magazines they should read.

The censorship battle, although directed still at retailers at the local level, is threatened by our court system. "Various legislative bodies—both state and local—have amended the laws that increase penalties with respect to materials that have been designated 'harmful to minors,' " states Media Coalition's chief counsel, Michael Bamberger. "This has caused people at the retail level a great deal of concern."

"There are real problems created by the recent passage of the Child Protection and Obscenity Enforcement Act," says Bamberger, "which is a sweeping extension of Federal power down to the local level." The Child Protection and Obscenity Enforcement Act was attached to anti-drug legislation in Congress. "The fact that censorship advocates were able to move Congress to pass the law is nothing short of astounding," says ACF's Teicher.

Pending legislation in the states of Virginia, Georgia, Indiana and New Mexico potentially threatens the single copy sales of magazines and books, affecting the way they are displayed and sold. "The number of state legislatures in which censorship questions have been raised has increased in the recent past," says Teicher. "In some states there has been an effort to use Rico statutes to go after distributors of books and magazines," Teicher says. This chilling prospect would allow not only harmless magazines, but current paperback bestsellers to be labeled "obscene," and to allow the bookseller and/or wholesaler to be prosecuted for carrying them.

There are several ways to ensure the continued dissemination of publications that can be utilized by publishers, national distributors, wholesalers and retailers alike. First, if you are the target of a censorship group, notify the ACF. This will enable them to add your complaint to the large base of information they need to fight the spread of censorship.

Publishers can work effectively with their national distributors and the IDs to communicate their message to retailers. *Sassy* magazine has done this effectively, with a presentation to retailers that they take on the road. The presentation outlines the untruths that were told about the magazine, and positively explains to retailers what the magazine is doing to help its readers. "Support from the wholesalers has been really great," said Matilda's Yates.

In addition to working through distributors, industry organizations are there to help. "The MPA was extremely helpful in getting us back into many accounts," said Yates. Other organizations like the Media Coalition, CPDA, the National Coalition Against Censorship and IPDA can be instrumental in keeping accounts open to magazines. Conde' Nast's Garavalia cautions retailers making delisting decisions. "Retailers have to make sure they understand the complexities of the marketplace and to make sure the distribution of magazines in their outlets matches the needs of their customers." M&B

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DATE 3-21-89
H/S SB'S 263, 307, 342

TESTIMONY ON SB 307 AND SB 342
to the
HOUSE JUDICIARY COMMITTEE

By
Gloria Hermanson
Montana Cultural Advocacy

Chairman Brown, Members of the Committee --

I am Gloria Hermanson. I reside in Helena and I represent the Montana Cultural Advocacy, a broad cross-section of Montanans who are committed to the development of our state's cultural resources.

I stand in opposition to Senate Bills 307 and 342. To subject our artisans, our librarians, and the writers and disseminators of the written word to the possible penalties proposed by these bills would be to subject our people to an isolated cultural existence.

Montana law contains existing statutes relative to obscene material. There is no need to expand them to include out and out censorship.

I urge a Do Not Pass Recommendation on both of these proposed pieces of legislation.

EXHIBIT 54
DATE 3-21-89
HB SB'S 263, 307, 342

March 21, 1989

Mr. Chairman and Members of the Judiciary Committee:

I wish to address you today regarding my strong opposition to two very dangerous bills, both offensive to me as an American citizen who treasures his full first amendment rights to freedom of speech.

These bills are SB 307 and SB 342.

I will address you today in two vital roles. The first is that of the Director of Montana's second largest public library, the Great Falls Public Library. Both of these bills propose severe fines and/or imprisonment for the distribution of materials defined as "obscene," as judged by an "average" citizen applying "contemporary community standards."

Who is this "average" person who will determine what may be purchased and circulated from the public library, who will determine what I may or may not read? Am I "average," or will you exclude me from this determination?

SB 342 forbids the depiction of the buttocks or the female breast. Will you put me in jail for allowing the circulation of a book of paintings by Michelangelo? What about the photographs of Brett Weston? Will you fine me $5,000 for having a book in the library which contains a word which has been deemed "obscene"? We then will not only have few librarians left, but there will be precious few fiction books of any sort available for the general public.

I would also like to address you as a private citizen, college educated, and, I think, an able, intelligent professional with wide reading tastes and a passion to explore and know. That, in a democracy, is not only my right, it is my sacred duty. A citizen denied access to books is a citizen who has lost his most precious right in a free society: the right to freely know. You cannot want this.

Is this mythical "average" citizen going to deny me reading James Joyce? Margaret Atwood? How about celebrated authors of Montana like Richard Ford or Tom McGuane? Will you burn the yearly Sports Illustrated swimsuit issue?

Please. Think about what you are doing. These bills tamper with basic constitutional rights. You must look beyond the emotion of the moment and see as clearly as our founding fathers did. Please vote against SB 307 and SB 342.

Jim Heckel
3012 Carmel
Great Falls, MT 59404

EXHIBIT 55
DATE 3-21-89
H/S SB'S 263, 307, 342

HARRY M. MURPHY, JR.
3912 HILTON AVENUE, N.E.
ALBUQUERQUE, NEW MEXICO 87110
TEL: (505) 881-0519

2 November 1988

Statement to the
Governor's Anti-Obscenity Task Force
State Capitol Building
Santa Fe, New Mexico

Dear Chairperson:

I hereby request that this statement and its attachments be entered into the formal written record of the hearings held by your Task Force.

First, some background information: I am a physicist recently employed at the Air Force Weapons Laboratory at Kirtland Air Force Base. I retired two years ago after nearly 34 years federal service. I have resided in Albuquerque for over 28 years and been active in a number of nonpartisan Albuquerque elections. I was appointed by Mayor Rusk to the Albuquerque Board of Ethics and Campaign Practices, where I served from 1979 to 1982. I have always considered my political beliefs to be those of a moderate Republican.

I am testifying today as a private citizen and as Vice-President of New Mexico Citizens Against Censorship. I want to emphasize that I have no financial or other interest whatsoever in any "adult bookstore" nor in any video sales or rental related businesses.

I make no pretenses of being an "expert on obscenity" but bring only what you as Task Force Members should bring -- an open and inquiring mind and an acute concern for the rights of the people of New Mexico.

I am here today because, after considerable study, I find: (1) There is no demonstrated need for additional obscenity legislation in New Mexico; (2) The "Discussion Draft" before your Task Force entitled "An Act Relating to Obscenity . . . " imposes a chilling prior restraint upon the sexually explicit materials available to New Mexico citizens and is, therefore, a patent violation of our rights under the First Amendment to the United States Constitution; and (3) The definitions of "obscene" and of "prurient" and of the acts and devices prohibited by the "Discussion Draft" are so imprecise as to violate the Due Process Clause of the Fourteenth Amendment which requires that all criminal laws provide fair notice of "what the State commands or forbids". [Ref. 1]

Over the past years, I have followed with some interest the abortive attempts at regulating "obscenity" in Bernalillo County and in Albuquerque. I read the report of President Johnson's Commission on Obscenity in 1970 and found its conclusions, based on two years of study supported by a budget of $2,000,000, convincing. I was both saddened and amused by President Nixon's predictable reaction of rejecting a report which did not endorse his preconceptions. I hoped that the Commission's findings had finally laid the question of the alleged harmfulness of "obscene" materials to a well-deserved rest.

Considering President Reagan's political debts to the right-wing factions of his party, it was not surprising for him to call for yet another Commission to "determine the nature, extent, and impact on society of pornography . . . and to make specific recommendations . . . [for] ways in which the spread of pornography could be contained . . ." This, of course, became known as "The Meese Commission".

What was surprising was the blatant way in which the membership of the Commission was stacked seven (including the Chairman and the Executive Director) to five to ensure that it would come up with the desired preconceived results -- namely that pornography is bad and should be suppressed.

Then, as Robert Scheer reports, "For nearly a year, the commission . . . wandered this country, seeking out the sickest, most pathetic examples of human sexual fantasy . . . For reasons best known to the staff (Sears and his aides), the commission exhibited an uncommon fascination with the scatological fringe of the porn world. No simple tits and ass for this crowd. Forget garter belts and even whips. This Federal commission spent much of its time -- and your money -- on fist fucking, golden showers, child porn, asphyxiation, anilingus, with side trips into such rarely considered fetishes as toenail-clippings collections, being squirted with real mothers milk and the private, carefully contoured world of sweat sniffing." [Ref. 2]

To no one's surprise, the Commission found that pornography was naughty and ought to be suppressed. Considering that the Commission was budgeted for only $500,000, sponsored no original research and was so free-wheeling in the conduct of its "investigations", the Report was received with a huge yawn and -- hopefully -- forgotten.

This fall, I was surprised to learn that three "anti-obscenity" bills were being considered by the Albuquerque City Council. I obtained copies of the bills, studied them, and attended the September 13th Council committee hearing on one of the bills where I heard a dreary parade of witnesses (including Mr. Frost of this Task Force) claiming all sorts of evils as resulting from pornography. Crime, rape, incest and child molestation were all attributed to pornography. I even learned that pedophiles prefer New Mexico!

As a physicist, I am familiar with the maxim, "Extraordinary claims demand extraordinary proof." Since that hearing, I have searched for proof that pornography causes harm, spending hours at the university library, squinting at microfiche records, plowing through the turgid prose of the Meese Report, reading magazine and journal articles and studying the anti-porn literature with its cloying religious overtones. (e.g. "If you think Playboy, etc., are harmless, drop to your knees and ask God to crack the shell of paganism, encrusting your heart.") [Ref. 3]

Exhibit # 55
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I have yet to find any credible scientific proof that pornography, of itself, causes any harm.

Even in the Meese Commission Report where -- of all places -- one would expect to find such proof, there is none. Instead, in the discussion of "Sexually Violent Material" in the chapter on "Question of Harm," we read:

> "Finding a link between aggressive behavior towards woman and sexual violence, whether lawful or unlawful, requires assumptions not found exclusively in the experimental evidence. We see no reason, however, not to make these assumptions." [Ref. 4]

and:

> "Thus we reach our conclusions by combining the results of the research with highly justifiable assumptions about the generalizability of more limited research results." [Ref. 5]

and:

> "We have not, of course, found that the images people are exposed to are a greater cause of sexual violence than all or even many other possible causes the investigation of which has been beyond our mandate." [Ref. 6]

and:

> "As a result, the so-called 'slasher' films, which depict a great deal of violence connected with an undeniably sexual theme but less sexual explicitness than materials which are truly pornographic, are likely to produce the consequences discussed here to a greater extent than most of the materials available in 'adults only' pornographic outlets." [Ref. 7]

And, in the discussion of "Nonviolent Materials Depicting Degradation, Domination, Subordination, or Humiliation", we find:

> "With respect to material of this type, there is less evidence causally linking the material with sexual aggression, but this may be because this is a category that has been isolated in only a few studies, albeit an increasing number. The absence of evidence should by no means be taken to deny the existence of a causal link." [Ref. 8]

And, in the discussion of "Non-Violent and Non-Degrading Materials", we find:

> "Although the social science evidence is far from conclusive, we are, on the current state of the evidence, persuaded that material of this type does not bear a causal relationship to

rape and other acts of sexual violence." [Ref. 9]

and:

> "The fairest conclusion from the social science evidence is that there is no persuasive evidence to date supporting the connection between non-violent and non-degrading materials and acts of sexual violence, and that there is some, but very limited evidence, indicating that the connection does not exist. The totality of the social science evidence, therefore, is slightly against the hypothesis that non-violent and non-degrading materials bear a causal relationship to acts of sexual violence." [Ref. 10]

In summary, the Meese Report, the very bible of the anti-porn zealots, says -- in effect -- "even though we don't have any evidence, we are going to make these 'highly justifiable' assumptions and jump to our conclusions anyhow."

What about rape? Doesn't the availability of porn result in increased rape? In the chapter on "Social and Behavioral Science Research Analysis", we find a discussion of the study by Baron and Straus in which they attempted to find a correlation between the rape rate and the circulation of eight "men's" magazines in all 50 states. The Meese Report says:

> "A fairly strong correlation -- +.64 -- was found between these circulation rates and rape rates." [Ref. 11]

and:

> "Using the Baron and Straus data set, Scott and Schwalm essentially confirmed the sex magazine - rape rate relationship although their additional analysis showed that when rape rates were correlated with specific magazines, these correlations were higher for Playboy, Penthouse, and Oui then they were for Hustler magazine. Their contention was that sexual content in Hustler magazine was more likely to be associated with rape since his magazine has more sexually violent material than the other three magazines." [Ref. 12]

and:

> "While Baron and Straus' work is impressive for its methodological care and thoroughness, their findings do not indicate that men are induced to rape as a result of exposure to these magazines." [Ref. 13]

Larry Baron and Murray Straus make the following comments on the use of their data by the Meese Report:

> "We found that rape rates are higher in states with a large readership of sexually explicit magazines. That impressed the commissioners. However, they were not impressed by our explanation that this correlation was most likely the result of a common factor which underlies both sex magazine readership rates and rape, nor by our recent demonstrations that when appropriate statistical controls are introduced, the correlation between sex magazine readership rates and rape no longer holds."
>
> "There are many such 'spurious' (i.e. noncausal) correlations. For example, there is a very high correlation between the reading ability of children and their shoe size, but having big feet does not cause children to read better. The underlying factor is the child's age -- older children read better and also have bigger feet. If age is statistically controlled, then the correlation between shoe size and reading ability does not hold. Similarly, we pointed out that there are underlying social and demographic factors which cause both high rape rates and high sex magazine readership. How does the commission report deal with such information? By ignoring our warnings and arguing that: 'The absence of evidence should by no means be taken to deny the existence of the causal link.' The commission is so bent on showing harmful effects that when the research shows none, they argue that harm simply has not yet been uncovered."
>
> "Our view of the totality of the scientific evidence is that it shows no causal relationship between pornography and rape. Indeed, Donnerstein's experimental studies show a reduction in aggression following exposure to pornography without violent content; and Berle Kutchinsky's recent studies of nations that have removed restrictions on pornography shows either no increase in the rape rate for the years after the legalization of pornography, or a decrease in the rape rate. Of course, there are aggressive and violent people who use sex as a means of expressing aggression, but images of sex do not cause such violence." [Ref. 14]

So much for the argument that porn causes rape. What about the rapists who claim that exposure to pornography led to their crime? I think we're hearing the old argument, "Don't blame me! The Devil made me do it!", or -- more appropriately -- "Don't blame me! Miss Jones made me do it!" If scientists were to lend credence to unsupported anecdotal evidence, they would find themselves spending all of their time investigating flying saucer reports!

Anecdotal evidence is the worst kind of evidence on which to base scientific conclusions: (1) There is no control of the myriad variables which may be involved; (2) There is no way the events can be replicated to verify that the alleged effect is produced by the alleged cause; and (3) The reports consist of isolated incidents which have been pre-selected because of some assumed common factor which may -- or may not -- be significant. Consider all the doleful tales of persons raped, or sodomized, or molested or degraded that the anti-porn crusaders delight in presenting as evidence of pornography causing harm and then ask yourself, "How many people enjoy sexually explicit material, or pornography, every day and yet do NOT commit rape, sodomy and so forth?" We must be extremely skeptical of drawing any conclusions from anecdotal evidence. In his classic "Introduction to Scientific Research", E. Bright Wilson says:

> "The so-called 'method of agreement' states that if the circumstances leading up to a given event have in all cases had one factor in common, that factor may be the cause sought. This is especially so if it is the only factor in common."
>
> "This principle is very important and is widely used. By itself alone it seldom constitutes valid proof of cause, however, mainly because it is very difficult to be sure that a given factor is really the only one common to a group of circumstances. There is, for example, the story of the scientist who was overliberal in enjoying Scotch and soda at a party. The next morning he felt very poorly; so that night he tried rye and soda, again rather too freely. The following day, he again noted the same distressing symptoms. The third night he switched to bourbon and soda, but the morning after was no more pleasant than the others. Analyzing the evidence, he concluded that thereafter he would omit the soda from his drinks, since it was the common ingredient in the three observed cases. [Ref. 15]

Does exposure to pornography result in sexual deviance, or paraphilia? In the summary of the "Social and Behavioral Science Research Analysis" section of the Meese Report, we find:

> "The contribution of pornography to sexual deviance remains an open question. At present, 'no single, comprehensive theory to explain the development of paraphiliac behavior has yet emerged'." [Ref. 16]

and:

> "It is unfortunate that the nature of the first masturbatory experiences and the role of pornography in that experience, if any, also remains a gap in our knowledge for future research to address." [Ref. 17]

and:

> "Finally, while self-reports of some offenders appear to implicate pornography in the commission of their sex offenses, the objective data of actual offenses committed which show no differences between those who use pornography and those who don't have to be viewed as tentative. [Ref. 18]

And there goes the argument that porn causes paraphilia. As Dr. John Money, professor of medical psychology and pediatrics at the Johns Hopkins University and Hospital, says:

> "The [Meese] report singles out for special mention urophilia, the paraphilia in which a man or a woman is turned on and climaxes sexually not in the usual way, but by being urinated upon and drinking urine. People who are not urophiliacs could be locked in a viewing room and forced to watch 50 hours -- or 500 hours -- of urophiliac movies, but they would not be turned into urophiliacs as a result of the experience. If you don't believe that statement, then try the experiment."
>
> "Paraphilias are not contagious. They are not caught from books, films or videotapes. The contagion theory is as old as witchcraft. . . . By clinging to the ancient falsehood of contagion, the report evades what should have been its major responsibility, namely, finding out how to prevent the development of paraphilias, especially those that it classified as violent or degrading, in the generation of children now growing up."
>
> "A boy does not need to look at pornography to know what turns him on sexually. Nature presents him with his own personal pornography in his wet dreams. Developmentally, the sequence is from wet dreams and masturbation fantasies to homemade pornography that copies the dream content and possibly, as he grows older, to commercial pornography -- but only if he finds the type of commercial pornography that matches his own wet dream and masturbation fantasies. Any other type, no matter how much it may stimulate someone else, will leave him cold." [Ref. 19]

What about the assertion that "Pornography is an $8 BILLION industry which is 85% controlled by organized crime."? Once again, we can turn to the Meese Report chapter on "Organized Crime" where we find:

> "In 1985, at the request of the Attorney General's Commission on Pornography, Director Webster conducted a brief survey of the fifty-nine FBI field offices concerning their knowledge of involvement of traditional organized crime in pornography.

> Director Webster advised this Commission, 'About three quarters of those offices indicated that they have no verifiable information that organized crime was involved either directly or through extortion in the manufacturing or distribution of pornography. Several offices, did however, report some involvement by members and associates of organized crime." [Ref. 20]

Since the FBI couldn't support their preconceptions, the Meese Commission turned to that old standby, anecdotal evidence, where we read the following exchange between a former member of the Cosa Nostra and the Commission:

> [Interviewer] "Could you describe the nature and type of involvement organized crime would have in the pornography industry when you were active in organized crime?"
>
> [Response] "Well, it's very, very big . . . I'd say, 95 percent of the families are involved in one way or another in pornography . . . It's too big. They just won't let it go."
>
> [Interviewer] "Okay, does organized crime reap a lot of money from their involvement in pornographic industry?"
>
> [Response] "Absolutely. Absolutely." . . . [Ref. 21]

And so we find the Meese Commission effectively rejecting the FBI Director's findings and, instead, relying on the testimony of former Cosa Nostra members!

It's well known that organized crime is involved in many profitable businesses, including construction, trucking, pizza parlors and -- probably -- pornography, too. But, if you find a crime syndicate running pizza parlors in your state, you prosecute the criminals for their crimes, you don't pass laws banning pizzas!

What about Alan Sears, the former Executive Director of the Meese Commission, and now on the staff of Citizens for Decency through Law? Did he have any proof that pornography causes harm in his testimony before this Task Force? I find this revealing exchange in his testimony:

> [Mr. McKinnon] "We're talking about criminal statues. You're going to try and make certain conduct a crime and put people into jail and I think the legislature would be interested in seeing what is competent proof or evidence that the viewing of these materials causes harm, sufficient to justify sending someone to jail."

[Mr. Sears] "We send people to jail, as I understand it, for civil rights violations in some states, and I think New Mexico, I haven't reviewed your statutes. Probably it has criminalized certain civil rights violations. You've already sent people to jail if you have such a statute and have used it for nonprovable harms according to strict social science criteria. But we have real live harms. We have real victims. There are many other criminal laws that we can't prove the kinds of data in the laboratory that you want to prove. We can't prove a lot of things with science. But to say that you can get one study that is going to answer your question magically, I'm not going to produce it, because if I did I'd be a fraud and nobody else can produce a legitimate study that says that unequivocally all by itself. You can take pieces of the puzzle and with social science you can prove pieces of the puzzle. I can give you hundreds of anecdotal cases and prove parts of the puzzle, but you have to put it all together. It's like a murder case. I can . . ."

[Mr. Frost] "Mr. Sears, thank you. I'm going to have to turn at this. We have others who want to testify. Thank you very much." [Ref. 22]

So, after considerable waffling, Mr. Sears admits he has NO scientific proof that pornography causes harm, but only "hundreds of anecdotal cases" with which he can "prove parts of the puzzle". And with this, Mr. Sears testimony comes to an abrupt end.

How popular are the "men's" magazines that feature sexually related articles and which contain nudity? Checking my copy of the World Almanac for 1988, I find that, based on the paid circulation, Playboy outsells Newsweek and that Penthouse outsells U.S. News & World Report. The combined circulation of both Playboy and Penthouse averages 5,826,657 copies per month. This is more than the number of copies of Woman's Day sold each month and certainly indicates that a substantial portion of our population finds these magazines not only unobjectionable but worth buying. [Ref. 23]

In summary, I have found no scientific proof that pornography is harmful nor that it leads to crime nor that it is "controlled by organized crime". Nor is an interest in sex and in sexually-related materials a minority interest.

Returning to Mr. Sears' testimony, I find a very disturbing note; Mr. Sears isn't talking of banning books, pictures and video tapes, each of which a jury -- after due deliberation -- has found to be obscene, he's talking of shutting down adult bookstores. He says: "We have 26 counties in the nation that have utilized this law to close every single hard core porn outlet, these date [sic] theaters and so-called adult bookstores." He goes on to boast how Atlanta, Cincinnati, Buffalo, Fort Lauderdale and New Orleans have been "cleaned up". No legal niceties

for Mr. Sears; his goal is to eliminate all sexually explicit materials -- illegal or not. Rarely has a self-appointed censor been so candid. Is this prior restraint? You bet it is!

Mr. Sears and other anti-porn crusaders continue to harp on the theme that pornography leads to sex crimes and rape, although they have no scientific evidence that it does. However, there are two "experiments" which strongly suggest that it does not.

Between 1967 and 1969, Denmark repealed its laws banning pornographic books, pictures and films. Did the sex offense and rape rates rise? No, they have been in a steady decline since then. (See Figure 1.) Although one can't infer that making pornography freely available reduced these crime rates, one certainly can't claim that it raised them, either. [Ref. 24]

West Germany repealed its pornography laws in 1973. Did the rape rate rise? No, the rape rate has remained more or less constant while all other offenses have nearly doubled. (See Figure 2.) Again, this suggests that rape isn't caused by pornography. [Ref. 25]

Well, the anti-porn people have attempted a number of possible explanations for these inconvenient results. What about data nearer to home? What about Atlanta, Buffalo, Cincinnati, Fort Lauderdale -- places which Mr. Sears claims have "cleaned up"? Using the most recent edition of the FBI's "Uniform Crime Reports" (1987), Figure 3 compares the 1986 and the 1987 rape rates for Albuquerque, Atlanta, Buffalo, Cincinnati, Fort Lauderdale and Los Angeles. Where are the dramatic reductions in crime that Mr. Sears lead us to expect? They don't exist! Compared with the "cleaned up" cities, Albuquerque certainly is no hotbed of rape; in fact, the rape rate declined 16 percent between 1986 and 1987. Even Los Angeles, where -- according to the Meese Report -- most of the pornographic films are made, shows a reduction in the rape rate. [Ref. 26]

The lure of anti-porn legislation is like that of Satan bidding for your soul: "Pass this legislation, and by magic I will wipe out crime and violence and impure thoughts -- all it will cost you is a little bit of your freedom."

Now I find myself before what can only be called a "Mini-Meese Commission", your Task Force. I find the same stacked representation and the same preconceived notion that pornography is -- somehow -- bad. Consider the name, "Anti-Obscenity Task Force". Consider the fact that the Task Force -- without waiting to hear all the testimony -- already has a "Discussion Draft" of the most vicious, repressive, unconstitutional, anti-sex law I have ever seen; a draft that could only have been written by zealous anti-porn fanatics. Consider the quaint phrase "Pandering Obscenity". Consider the list of prohibited "sexual devices" a list that may well be interpreted to include Vaseline, KY-jelly and even condoms. Consider the repeated use of the phrase "harmful to minors", as if such harm had already been established. Consider the

prior restraint implied when the prosecuting authority notifies a dealer that the prosecuting authority has determined that certain items being sold are illegal. Consider the incredible provision that an injunction can be brought if a person is about to violate the act. Consider that, for the cost of a $500 bond, a private citizen can file an injunction in the name of the state!

The "Discussion Draft" amounts to nothing more than an attempt to impose censorship of all sexually explicit materials in New Mexico. New Mexicans don't need a censor telling them what they can and what they can't read or view.

I ask that the Task Force face up to the fact that there is no need for obscenity legislation in New Mexico and I urge the Task Force to reject the "Discussion Draft" as unneeded, hateful, bad law.

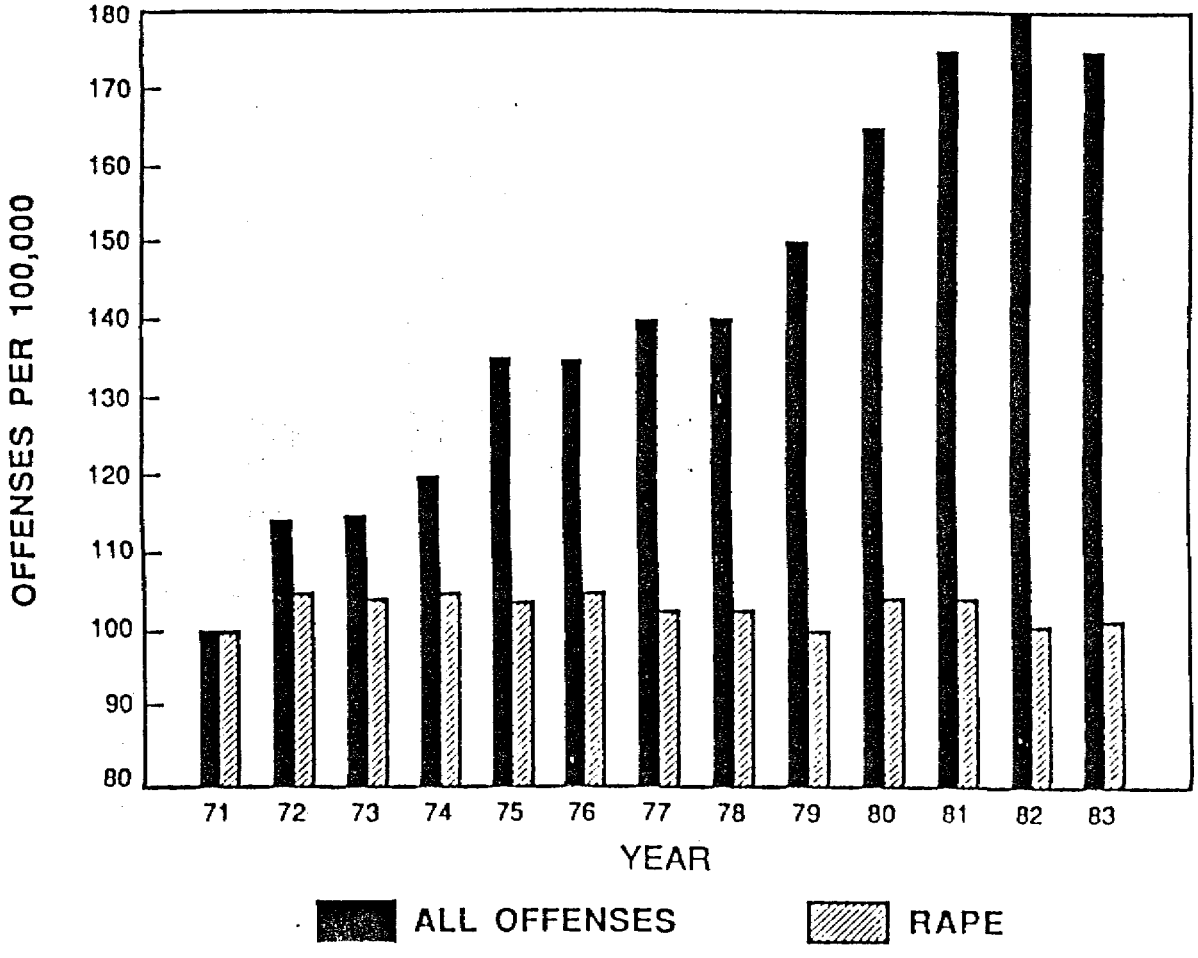
Sincerely,

Harry M. Murphy

Attachments:
Figures 1, 2 & 3.
References.
References Consulted.

Reported total sex offenses and sex offenses against female children in Denmark between 1965 and 1982. (Adapted from Kutchinsky, 1985.)

Figure 1.



Reported total crime and rape in West Germany between 1971 and 1983. (Adapted from Kutchinsky, 1985.)

Figure 2.

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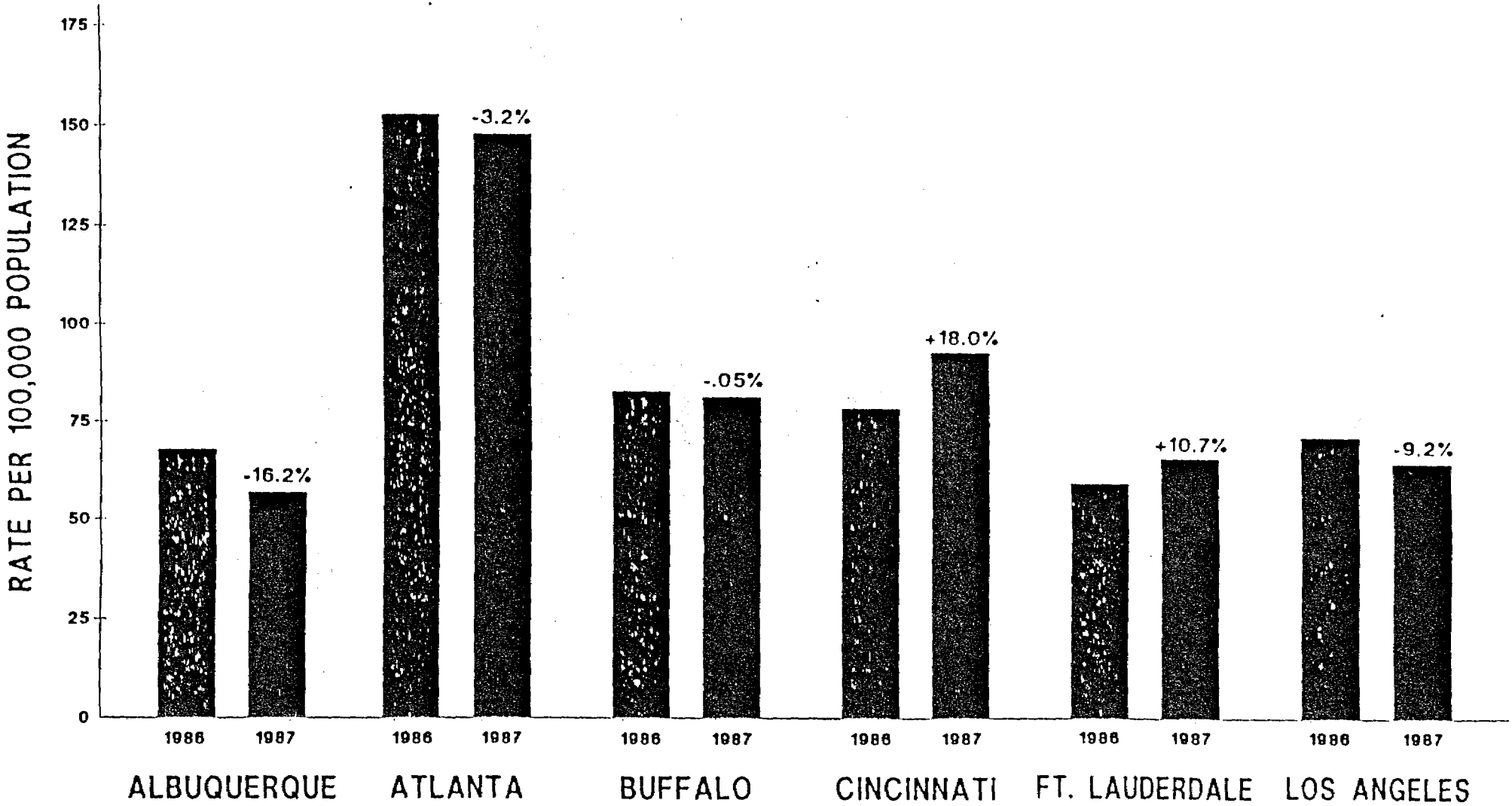
NUMBER OF RAPES REPORTED PER 100,000 POPULATION



SOURCE: U.S. DEPARTMENT OF JUSTICE

Figure 2

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References

[1] Dissenting Opinion of Justices Brennen, Stewart and Marshall, in Paris Art Theatre I v. Slaton, 413 U.S. 49: 1973, as quoted in Mason, Beany & Stephenson, "American Constitutional Law", 7th Edition, Prentice-Hall Inc., Englewood Cliffs, NJ, 1983, p 555 - 556.

[2] Scheer, Robert, "Inside the Meese Commission", PLAYBOY Magazine, August 1986, p 60, 157-167.

[3] Gallagher, Neil, "The Porn Plague", Bethany House Publ., Minneapolis, NM, 1981, p 48.

[4] United States Attorney General's Commission on Pornography, "Final Report of the Attorney General's Commission on Pornography", Reprint by Rutledge Hill Press, Nashville, TN, 1986. [This is a slightly abridged and renumbered edition of the original report, commonly known as "The Meese Report". In this, and subsequent citations, the pages and columns cited refer to this edition.] Meese, p 39, col 2.

[5] Meese, p 39, col 2.

[6] Meese, p 40, col 1.

[7] Meese, p 40, col 2.

[8] Meese, p 42, col 1.

[9] Meese, p 43, col 2.

[10] Meese, p 43, col 2.

[11] Meese, p 261, col 1.

[12] Meese, p 262, col 1.

[13] Meese, p 262, col 2.

[14] Baron, Larry, & Straus, Murray, "Two False Principles", comment in Nobile, P., & Nadler, E., "United States of America Vs. Sex", Minotaur Press, New York, NY, 1986, p 352-353.

[15] Wilson, E. Bright, (Jr.), "Introduction to Scientific Research", McGraw-Hill Book Co, New York, NY, 1952, p 32.

[16] Meese, p 270, col 2 & 271, col 1.

[17] Meese, p 271, col 2.

[18] Meese, p 271, col 2.

[19] Money, John, "A Conspiracy Against Women", comment in Nobile, P., & Nadler, E., "United States of America Vs. Sex", Minotaur Press, New York, NY, 1986, p 340-341.

[20] Meese, p 293, col 2 & 294 col 1.

[21] Meese, p 296, col 1.

[22] Testimony of Mr. Alan Sears, legal counsel for Citizens for Decency through Law, before the Governor's Anti-Obscenity Task Force, State Capitol Building, Santa Fe, NM, October 14, 1988.

[23] Hoffman, M. (Ed), "The World Almanac -- 1988", World Almanac, New York, NY, 1987, p 358-359.

[24] Donnerstein, E., Linz, D., & Penrod, S., "The Question of Pornography", (Research Findings and Policy Implications), The Free Press (A Division of Macmillan, Inc.), New York, NY, 1987, p 62.

[25] Donnerstein, p 63.

[26] Federal Bureau of Investigation, "Uniform Crime Reports, 1987", (subtitled: "Crime in the United States"), United States Department of Justice, Supt. of Doc., Washington, D.C., 1988.

References Consulted

Albuquerque Police Department, Press Releases, "Crime Statistics", 22 Jan 88, 2 Mar 88, 21 Mar 88, 18 Apr 88, 20 May 88, 17 Jun 88, 18 Jul 88, 22 Aug 88, 14 Sep 88 & 17 Oct 88, Albuquerque Police Department, Albuquerque, NM.

Anderson, David E., "Porn & Violence, Fantasy & Freedom", in "Christianity and Crisis", V47(6) (Apr 20, 1987), p 144-147.

Brannigan, Augustine, "Pornography and Behavior: Alternative Explanations", (critique of Zillmann's 1982 article), in "Journal of Communications", V37(3) (summer) 1987, p 185-189.

Burger, Fred R., "Pornography, Sex, and Censorship", p 83-104 in "Pornography and Censorship", Copp & Wendell (Ed), Prometheus Books, Buffalo, NY, 1983.

Burstyn, Varda (Ed), "Women Against Censorship", Douglas McIntyre, Vancouver, BC, p 183-205.

Christensen, Ferrel, "Sexual Callousness Re-Examined", (critique of Zillmann's 1982 article), in "Journal of Communications", V36(1) (winter) 1986, p 174-184.

Christensen, Ferrel, "Effects of Pornography: The Debate Continues" (rebuttal to Zillmann), in "Journal of Communications", V37(1) (winter) 1987, p 186-187.

Cline, Victor B. (Ed), "Where Do You Draw the Line?", Brigham Young University Press, 1974.

Cline, Victor B., "Pornography Effects: Empirical Evidence", University of Utah, Salt Lake City, (no date).

Cline, Victor B., "Testimony of Dr. Victor Cline", Governor's Anti-Obscenity Task Force, Santa Fe, NM, 1988.

Cooper, Chris, "STOP Fights Obscenity, Not Speech", in "The Playboy Forum", PLAYBOY Magazine, Dec 1988, p 57-59.

Dee, Juliet L., "Media Accountability for Real-Life Violence: A Case of Negligence or Free Speech?", in "Journal of Communications", V37(2) (spring) 1987, p 106-138.

Donnerstein, Edward, "Pornography and Violence Against Women: Experimental Studies", p 219-321 in "Pornography and Censorship", Copp & Wendell (Ed), Prometheus Books, Buffalo, NY, 1983.

Donnerstein, E., & Linz, D., "Mass Media Sexual Violence and Male Viewers", in "American Behavioral Scientist", V29(5) (May/June 1986) p 601-618.

Donnerstein, E., & Linz, D., "The Question of Pornography", in "Psychology Today", Dec 1986, p 56-59.

Donnerstein, E., Linz, D., & Penrod, S., "The Question of Pornography", (Research Findings and Policy Implications), The Free Press, (A Division of Macmillian, Inc.), New York, 1987.

Einsiedel, Edna F., "The British, Canadian, and U.S. Pornography Commissions and Their Use of Social Science Research", in "Journal of Communications", V38(2) (spring) 1988, p 108-121.

"Facts on File", Facts on File, Inc., New York, NY. (Multiple issues.)

Federal Bureau of Investigation, "Uniform Crime Reports, 1987", (subtitled: "Crime in the United States"), United States Department of Justice, Supt. of Doc., Washington, D.C., 1988.

Frost, Richard & Stauffer, John, "The Effects of Social Class, Gender, and Personality on Physiological Responses to Filmed Violence", in "Journal of Communications", V37(2) (spring) 1987, p 29-45.

Gallagher, Neil, "The Porn Plague", Bethany House Publ., Minneapolis, MN, 1981.

Green, Richard, "Exposure to Explicit Sexual Materials and Sexual Assault: A Review of Behavioral and Social Science Research", in "The Psychology of Women", Walsh, Mary R. (Ed), Yale Univ. Press, New Haven, CT, 1987, p 430-440.

Hoffman, Mark S. (Ed), "The World Almanac -- 1988", World Almanac, New York, NY, 1987, p 358 -359.

Jefferson, Thomas, Letter to Thomas Law dated June 13, 1814 in "Thomas Jefferson -- Writings", The Library of America, New York, NY, 1984, p 1335-1339.

Katchadourian, H., & Lunde, D., "Fundamentals of Human Sexuality", Holt Rinehardt & Winston, Inc., New York, NY, 1972, p 444-447.

Kendrick, Walter, "The Secret Museum", (Pornography in Modern Culture), Viking Press, New York, NY, 1987.

Kirk, Jerry R., "Testimony of Dr. Jerry R. Kirk", U.S. Senate Committee on the Judiciary", Washington D.C., Jun 8, 1988.

Kurtz, Howard, "'Serious' Flaws Shelve $734,371 Study -- Justice Department Won't Publish Analysis of Cartoons in Sex Magazines", in "The Washington Post", Washington D.C., Nov 19, 1986.

Exhibit # 55
3/21/89

Lederer, Laura (Ed), "Take Back the Night", William Morrow & Co., New York, NY, 1980, p 241-247.

Lewis, Felice F., "Literature, Obscenity, & Law", Southern Illinois University Press, 1976, p 225-276.

Linz, D., Penrod, S., & Donnerstein, E., "Issues Bearing on the Legal Regulation of Violent and Sexually Violent Media", in "Journal of Social Issues", V42(3), 1986, p 171-192.

Luria, Z., Friedman, S., & Rose, A., Chapter 20, "Pornography" in "Human Sexuality", John Wiley & Sons, New York, NY 1987, p 615-636 and A1-A2.

Malamuth, N. M., & Briere, J., "Sexual Violence in the Media: Indirect Effects on Aggression Against Women", in "Journal of Social Issues", V42(3), 1986, p 75-92.

Malamuth, N. M. & Ceniti, J., "Repeated Exposure to Violent and Non-violent Pornography: Likelihood of Raping Ratings and Laboratory Aggression Against Women", in "Aggressive Behavior", Vol 12(2) 1986, p 129-137.

Malamuth, N. M., "Do Sexually Violent Media Indirectly Contribute to Antisocial Behavior?", in "The Psychology of Women", Walsh, Mary R. (Ed), Yale Univ Press, New Haven, CT, 1987, p 441-459.

Mason, A., Beaney, W., & Stephenson, D., "American Constitutional Law", Seventh Edition, Prentice-Hall, Inc., Englewood Cliffs, NJ, 1983, p 551-556.

Minnery, Tom (Ed), "Pornography -- A Human Tragedy", Tyndale House Publishers, Inc, Wheaton, IL, 1987.

Nobile, P, & Nadler, E., "United States of America Vs. Sex", Minotaur Press, New York, NY, 1986.

Paletz, David L., "Pornography, Politics, and the Press: The U.S. Attorney General's Commission on Pornography", in "Journal of Communications", V38(2) (summer) 1988, p 122-137.

Pellauer, Mary, "Pornography: An Agenda for the Churches", in "The Christian Century", V104(22) (Jul 29/Aug 5, 1987), p 651-655.

Petersen, James R., "The Big Lie: Reisman Revisited", in "The Playboy Forum", PLAYBOY Magazine, October 1988, p 45-52.

Playboy Magazine, "Playboy Magazine Sues Meese", PLAYBOY Magazine, August 1986, p 46.

Scheer, Robert, "Inside the Meese Commission", PLAYBOY Magazine, August 1986, p 60, 157-167.

Sellen, Betty-Carol, & Young, Patricia A., "Feminists, Pornography & the Law" (An Annotated Bibliography of Conflict, 1970-1986), Library Professional Publications, Hamden, CT, 1987.

Showers, R. W., Memorandum To: Members of the Albuquerque City Council From: The American Civil Liberties Union of New Mexico (ACLU), Subject: Council Bill Nos. O-53; O-54; O-55 and F/S O-55, Sep 23 1988, 23 pages.

Stanley, Lawrence A., "The Child-Pornography Myth", in "The Playboy Forum", PLAYBOY Magazine, Sep 1988, p 41-44.

Swomley, John M., "Wrongheaded Pornography Campaign", in "The Christian Century", V105(8) (Mar 9, 1988), p 251-253. (Reprinted as "Kansas City Con" in "The Playboy Forum", PLAYBOY Magazine, Nov 1988, p 50-51.)

Swomley, John M., "STOP Campaign is Unethical", in "The Playboy Forum", PLAYBOY Magazine, Dec 1988, p 59-61.

United States Attorney General's Commission on Pornography, "Final Report of the Attorney General's Commission on Pornography", Reprint by Rutledge Hill Press, Nashville, TN, 1986.

United States Supreme Court, "Marvin Miller v. State of California", 413 U.S. 15 (1973), p 357-366 in "Pornography and Censorship", Copp & Wendell (Ed), Prometheus Books, Buffalo, NY, 1983.

Wall, James M, "Attack on Pornography Misses the Mark", in "The Christian Century", V104(27) (Sep 20, 1987), p 811-812.

Whitcraft, Brian, "Porn in the USA", p 22-23 in "Video Business", Sep 23 1983.

Wilson, E. Bright, (Jr.), "Introduction to Scientific Research", McGraw-Hill Book Co, New York, NY, 1952.

Zillmann, Dolf & Bryant, Jennings, "Pornography, Sexual Callousness, and the Trivialization of Rape", in "Journal of Communications, Vol 32(4) (Fall) 1982, p 10-21.

Zillmann, Dolf & Bryant, Jennings, "A Response" [to Christensen's 1986 article] in "Journal of Communications", V 36(1) (winter), p 184-188.

Zillmann, Dolf & Bryant, Jennings, "Effects of Pornography: The Debate Continues" (rebuttal to Christensen), in "Journal of Communications", V37(1) (winter), 1987, p 187-188.

Zillmann, Dolf, & Bryant, Jennings, "A Reply [to Brannigan's critique]", in "Journal of Communications", V37(3) (summer) 1987, p 189-192.

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HB SB'S 263, 307, 342

Present to Pornography Commission Hearing Hawaii

USE OF PORNOGRAPHY AND EROTICA BY SEX OFFENDERS

Gene G. Abel, M.D., Professor of Psychiatry
Emory University School of Medicine
Atlanta, Georgia

A considerable divergence of opinion exists regarding the effects of pornography and erotica. Pornography is defined as depictions of non-consensual, coersive sexual activities; erotica is defined as depictions of consensual sexual activities. It has been suggested that the use of pornography can lead to the development of deviant sexual interests and ultimately, to the commission of sex crimes. If a relationship exists between pornography and the subsequent commission of sex crimes, one would expect to find it most prominently among sex offenders.

CLINICAL IMPRESSIONS OF THE USE OF PORNOGRAPHY

The following conclusions are based upon the author's clinical experience over the last 19 years with sex offenders (child molesters, rapists, sadists, exhibitionists, window peepers, and frotteurs) and a detailed study of 256 sex offenders seen over the last few years in Memphis, Tennessee and New York City.

If pornography leads to deviant sexual behavior, it will do so either by initiating an interest in deviant sexual behavior (in individuals with no prior interest) or by reinforcing deviant sexual behavior in those who have already developed an interest. Little is known about the development of deviant sexual interests but it appears to be multi-causal and to begin prior to age 18. Deviant sexual behavior is learned and as such, the factors influencing its initiation and maintenance are similar to the learning principles that apply to the development of non-deviant sexual interests.

Clinical impressions indicate that pornography is an insignificant factor in the initiation of deviant sexual interest. In less than 1% of cases, the sex offender reported that his initial interest in deviant sexual behavior resulted directly from the use of pornographic magazines, books, or films. More frequently, the young sex offender has acquired his deviant sexual interest from a poor appreciation of the inappropriate nature of his early sexual experiences, from having been a victim of a sexual assault himself, or by observing the sexual victimization of others by his peers or family members. Sex offenders rarely report deviant interests resulting from depictions in the media.

The maintenance of interest in deviant sexual behavior, on the other hand, is influenced by the use of pornography. The offender's use of pornography reinforces and maintains his arousal to deviant sexual interests. After the novice sex offender has acquired an interest in deviant themes, he begins to fantasize about the commission of deviant sex acts while sexually excited and during orgasmic experiences. The offender's pairing or association of deviant sexual images with the pleasure of the orgasmic experience makes the deviant themes, fantasies or depictions more erotic and non-deviant fantasies less erotic. In this fashion, the use of deviant fantasies during orgasm maintains deviant interests and thereby prolongs the risk of the sex offender acting upon his deviant interests. In the course of his daily routine, the sex offender relies on his internal fantasies of deviant stimuli which are readily available

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to him. In some cases, the sex offender reinforces his fantasies by seeking out pornography that depicts his deviant sexual interests.

However, fantasy and the use of pornography can also transiently decrease the likelihood for some offenders to commit sex crimes. Many are fearful of arrest as a consequence of the commission of a sex crime, and choose instead to use pornography or their deviant fantasies while masturbating to orgasm in solitude. They report that masturbation to deviant fantasies temporarily reduces their urge to actually commit the crime. However, once again, the pairing or association of deviant fantasies with the pleasurable experience of orgasm perpetuates the deviant sexual interest.

CLINICAL EXPERIENCE WITH EROTICA

To add more objective data to clinical impressions of the use of pornography and erotica by sex offender, a detailed study was undertaken of 256 sex offenders undergoing outpatient psychiatric evaluation because of deviant sexual interests. To increase the validity of data, extensive steps were taken to protect the confidentiality of the offenders' self-reports. Furthermore, questions regarding sexually explicit material were imbedded within a general evaluation thus giving minimal cues as to the actual focus of the study.

Questions were formulated to determine the impact of erotica readily available throughout the United States (Playboy, Penthouse, Gallery, Hustler). The impact of hardcore, pornographic material (such as graphic depictions sado-masochist acts and child molestation) was not directly examined because it is not readily available in this country and, perhaps as a consequence, is not regularly used by the majority of sex offenders.

Table 1 shows the percentage of sex offenders (paraphiliacs) who used erotica. Results are categorized by the age of the sex offender's victim, and indicate that 50%-77% of sex offenders reported the use of erotica.

TABLE 1. USE OF EROTICA BY AGE OF VICTIM

Victim (of paraphilia)	n	% who use
Adults	48	77.1
Adolescents	52	67.3
Adolescents (incest)	16	50.0
Children	88	63.6
Children (incest	43	60.5
	247	

Sex offenders using erotica were asked what effect its use had on their deviant sexual arousal. Results were categorized as to whether the use of erotica increased, decreased, or did not affect their deviant sexual arousal. Table 2 indicates that a large percentage of sex offenders reported that erotica neither increased nor decreased their deviant arousal. Less than 12% of the participants reported that the use of erotica decreased their deviant arousal and 39%-60% reported that the use of erotica increased their deviant sexual interests.

TABLE 2. EFFECTS OF EROTICA ON PARAPHILIACS BY AGE OF VICTIM

Victim (of paraphilia)	n	No effect	Increased Arousal	Decreased Arousal
Adults	37	32.4%	59.5%	8.1%
Adolescents	35	51.4%	42.9%	5.7%
Adolescents (incest)	8	62.5%	37.5%	0.0
Children	56	48.2%	46.4%	5.4%
Children (incest)	26	50.0%	38.5%	11.5%
	162			

Table 3 shows the self-reported effects of erotica by category of sex offense which the offender had committed. The majority of offenders were child molesters with smaller numbers of rapists, exhibitionists, and frotteurs. Results indicated once again that a large percentage of sex offenders reported that erotica neither increased nor decreased their deviant sexual arousal. Less than 13% reported that erotica decreased their deviant sexual arousal, and 38%-64% reported that the use of erotica increased their deviant sexual interests.

TABLE 3. EFFECTS OF EROTICA ON PARAPHILIACS BY DIAGNOSIS

Diagnosis	n	No effect	Increased Arousal	Decreased Arousal
Child molesters	112	51.8%	42.0%	6.3%
Rapists	16	31.3%	56.3%	12.5%
Exhibitionists	14	28.6%	64.3%	7.1%
Frotteurs	8	50.0%	37.5%	12.5%
	150			

To investigate further the possible relationship between the use of erotica and deviant sexual behavior, the subject population was divided into two groups: those who used and those who did not use erotica. Table 4 shows the various characteristics of these two groups that were examined (using T test statistics) to determine if any statistically significant differences existed. A number of variables (numbers of crimes, numbers of victims, ability to control deviant behavior, and extent of coersion used during the crime) showed no differences between the groups. The only difference that we discovered was that the group who used erotica were more socially skilled than others and that their deviant sexual interests had begun earlier. Although it is interesting that sex offenders who had their deviant arousal longer are more likely to use erotica, it is of greater significance that there are no other differences between many of the characteristics of sex offenders. If erotica significantly influenced commission of crimes or the amount of violence used, differences would have been apparent.

EXHIBIT 56
DATE 3-21-89
HB SB'S 263, 307, 342

TABLE 4. RELATIONSHIP OF EROTICA AND PARAPHILIAS

Characteristics of Paraphilia	Uses erotica	Does not use erotica	P value
Mean number of sex crimes	302.0	234.0	NS
Mean number of victims	139.0	200.0	NS
Sex crimes/month	1.7	1.4	NS
Victims/month	1.0	0.9	NS
Duration of paraphilia (months)	128.0	86.0	.005
Ability to control behav. (100=complete)	81.0	82.0	NS
Age	33.3	32.2	NS
Coersion during crime (5=severe)	3.2	3.2	NS
Social skills (5=excellent)	3.1	2.6	.001
Assertive skills (5=excellent)	2.8	2.7	NS
Empathy skills (5=excellent)	3.3	3.0	NS
Number of subjects	170.0	86.0	

A final analysis was made of the subgroup of sex offenders who used erotica. Offenders were subdivided into two groups: those in which erotica increased deviant arousal, and those in which it did not increase deviant sexual arousal. Once again, T test statistical analyses were used to determine if any significant differences existed between these two groups. Results illustrated in Table 5 once again show no statistical difference between the majority of characteristics of the two groups of sex offenders. Those for whom erotica increased deviant sexual arousal were essentially similar to those for whom it did not. If the use of erotica has a significant impact on sex offenders, one would have expected major differences between the two groups in the number of victims, number of sex crimes, or the amount of coersion used during the commission of sex crimes.

TABLE 5. RELATIONSHIP BETWEEN EFFECTS OF EROTICA AND PARAPHILIAS

Characteristics of Paraphilia	Increases arousal	Doesn't increase arousal	P value
Mean number of sex crimes	421.0	189.0	NS
Mean number of victims	124.0	153.0	NS
Sex crimes/month	2.2	1.3	NS
Victims/month	1.0	1.0	NS
Duration of paraphilia (months)	160.0	99.0	.001
Ability to control behavior (100=complete)	75.0	86.0	.002
Age	33.7	32.9	NS
Coersion during crime (5=severe)	3.2	3.2	NS
Social skills (5=excellent)	3.0	3.2	NS
Assertive skills (5=excellent)	2.6	2.9	NS
Empathy skills (5=excellent)	3.2	3.3	NS
Number of subjects	82.0	88.0	

One significant difference was again in the duration of the deviant sexual interest. Those who had their deviant sexual interests longer were more likely to use erotica.

Another finding was related to the sex offender's ability to control his deviant arousal. Those reporting that erotica increased their deviant interests also reported poorer ability to control their deviant sexual interests. This may suggest that paraphiliacs with poor control over their deviant sexual interests also have poor control over acquiring erotica, or that paraphiliacs who use erotica develop poorer control over their deviant behavior. The correct interpretation cannot be determined from this study.

CONCLUSIONS AND RECOMMENDATIONS

(1) Experience with sex offenders indicates that pornography appears to be an insignificant factor in the initiation of interest in deviant sexual behaviors. (2) However, pornography appears to influence the maintenance of deviant sexual interest by sustaining deviant sexual interests as the offender repeatedly uses pornographic material when sexually aroused. At the same time, however, (3) pornography appears to reduce the commission of some sex crimes by offering an immediate release with a subsequent decreased desire after the offender reaches orgasm using pornography. His use of self-generated deviant fantasies can also serve the same purpose.

Although a detailed study of sex offenders reveals that a high percentage use erotica, the only consistent finding was that sex offenders whose deviant interests were of longer duration are more likely to use pornography.

The results appear to be in contrast to some studies reporting extensive use of pornography by sex offenders. There is no questions that some sex offenders use pornography and traffic in pornography as a direct result of their deviant sexual interests. There can also be no question that a few offenders (generally those arrested for trafficking in pornography) have large collections with extensive national and international connections. Although their cases are dramatic and sensational, this group of sex offenders is rather atypical.

At present, based upon these results, elimination of pornography (depictions of non-consenting sex) may assist sex offenders in controling their deviant behavior by making it more difficult for them to sustain their deviant sexual interest. Erotica (depictions of consensual sexual activities) however, does not appear to affect significantly the behavior of sex offenders.

EXHIBIT 57
DATE 3-21-89
HB SB's 263, 307, 342

Against Censorship: Testimony to the Montana House

The Salman Rushdie affair makes an American more grateful than ever for the constitutional protection accorded to literature under our system of government. How ironic, then, that at this moment the Montana Legislature should be considering bills that would encourage moral vigilantes to arrest books.

Senate Bill 307 looks to "the average person" to decide whether or not a work of literature is obscene. Considering that "the average person" has read little literature, I do not see what qualifies this individual to judge on questions of literary merit. How many members of the Montana Legislature itself are familiar with the three landmark prosecutions of "obscene" literature, all of which failed? I refer to the prosecution of Madame Bovary in 1857, the Ulysses decision of 1933, and the unsuccessful prosecution of Lady Chatterley's Lover in England in 1962. All of these books now stand as works of recognized literary merit. The "average person" today, if he or she has heard of them, has certainly not read them. What qualifies this individual to pronounce on matters he or she knows nothing of? And what is to stop this person from arresting Ulysses all over again? As a professor of literature, I find it bitterly ironic that the "average person" is content to ignore literature until the day when he or she decides that a particular work has to go. Or many works, for as we know from abundant experience, censors make long lists.

I hope that members of the Montana Legislature are not about to embrace censorship out of fear of being labeled "soft on porn" by a shrill minority. It seems to me that anyone entering public life has to expect that kind of detraction and has the duty to stand up to it. In this case, not standing up to it amounts to giving the declared enemies of literacy the power to write public policy. Once in force, a censorship statute will embolden "average persons" to conduct sweeps of bookstores, as has been done in high school libraries. (The night-time sweep of a high school library brought about the case of Pico v. Island Trees, decided by the U. S. Supreme Court a few years ago.) All this seems a high price to pay for the timorousness of legislators.

As a student of the history of censorship, I have spoken to a number of Montana audiences on the subject, including the State PTA Convention in Missoula in 1988. My distinct impression is that most Montanans do not want to bring back censorship. They respect the First Amendment. They do not feel the foundations of civilization threatened by works of literature that are little enough read as it is.

The Victorians, who were better-read than we are, found Shakespeare indecent, unsuitable for "family reading." They read his works in expurgated editions. If the Montana Legislature enacts a censorship law, there would be nothing to bar a Montanan from declaring him- or herself an average person and prosecuting a bookseller for stocking Shakespeare. To think incidents like this "couldn't happen" would be folly: they do happen. According to the eminent literary scholar Northrop Frye, "The qualities

--continued--

that morality and religion usually call ribald, obscene, subversive, lewd, and blasphemous have an essential place in literature . . ." In a way that the Montana Legislature surely doesn't intend, the censorship bills under consideration imperil literature as such. They make the "average person" into a high court with the power to strike down the works of Chaucer, Shakespeare, Milton, Flaubert, Joyce, Lawrence. The Ayatollah put a bounty on an author's head. The Montana Legislature, if it passes the bills under discussion, will be declaring open season on literature.

Stewart Justman

Stewart Justman
1703 Maurice
Missoula, MT 59801

EXHIBIT 58
DATE 3-21-89
HB SBs 263, 307, 342

March 17, 1989

Members
House Judiciary Committee
House of Representatives
State Capital
Helena, MT 59620

Dear Members of the House Judiciary Committee,

I would like to strongly urge you vote against SB 307, prohibiting the sale of pornography to consenting adults and SB 263, prohibiting nude dancing in bars.

I feel both these bills constitute censorship. Censorship, at best, should be enforced at the lowest level of government possible, i.e. city and county government. This is certainly not something the state government should delve into. Censorship should actually be controlled by the marketplace. If the buying public does not purchase objectional material, sooner or later, the business selling it will go out of business or drop the such items not selling. Evidently there are enough honest, law-abiding citizens in this state who wish to purchase certain pornographic material that businesses realize a demand and inventory these items. Passage of these measures would deny these citizens their rights to view any material of their choice. A basic inalienable right of a citizen of the United States.
I am not talking about the criminal or mental people whose activities are most often prompted by other problems. These are the people who actually constitute a small part of the buying public but occupy a large part of the media through their actions.

Censorship also creates a gray area of judgement. What is obscene or pornographic to one person is not that way to another. Who is to judge? Much of the current literature and cinemas could be construed by some to be obscene or pornographic, but by to most is not. I feel once you let censorship start it is impossible to stop. Our freedom of choice starts to diminish.

I have upon occasion gone to one of these nude dancing bars with friends for a little innocent fun. Nothing harmful occured there. Everyone there was a consenting adult and the decorum was generally well behaved. I know of law enforcement people, off duty, county commissioners, a judge and many local prominent business people who have gone to these bars at times. So you see it is not a degenerate group who has patronized these nude bars. If there are objections to these establishments then the local county or city should be the ones to control them. SB 263 is ludicrous. We do not need "BIG BROTHER" telling us how to entertain ourselves.

EXHIBIT 58
DATE 3-21-89
HB SB's 263, 307, 342

Please look beyond the moralistic cries of the self-rightous ones who would force their will on the citizens of our state and see the implications of passage of SB 307 and SB 263. This is CENSORSHIP in it's purist form. Thomas Jefferson said "A government that governs least, governs best." I feel this applies to these bills.

I do find merit in SB 342. We have a duty to protect our minors. Any pornograghic material should not be accessible to minors.

VOTE NO ON SB 307 and SB 263.

Sincerely,

Linze Brockmeyer

Linze Brockmeyer
St. Ignatius

EXHIBIT 59
DATE 3-21-89
HB SB'S 263 307 342

Petition Returns

Billings:	
Grand	446
Heights	348
27th	323
Laurel	268
Missoula	1,213
Bozeman	301
Great Falls	230
Lewistown	145
Circle	80
Bridger	56
Havre	1021
Helena	

446.+
348.+
323.+
268.+
1,213.+
301.+
230.+
145.+
80.+
56.+
010 1021
3,410.*
4431
0.*

Exhibit # 59
3/21/89

ATTENTION VIDEO CUSTOMERS

Pending legislation before the Montana Legislature would prohibit the rental of "R", "X" and some "PG-13" movies to any person, including adults. If passed, this legislation would cause Video Stores to close. We believe that current safeguards against renting of sensitive movies are adequate.

Senate Bills 342 and 307 have passed the Montana Senate and are being considered by the House Judiciary Committee in a hearing on MARCH 21, 1989.

PLEASE HELP US BY SIGNING A PETITION TO AMEND THE BILLS.

EXHIBIT # 59 INCLUDED 257 PAGES OF SIGNED PETITIONS. THEY CAN BE SEEN AT THE HISTORICAL SOCIETY.

SB 263, 307, 342
3/21/89

WITNESS STATEMENT

NAME Tom McGillvray BUDGET _____

ADDRESS 2507 Wyoming Ave.

WHOM DO YOU REPRESENT? Mt. Ch. for Decency Dr. Law - Yellowstone Co.

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

Support for pro decency:

- Mayor J. Van Arsdale (Billings)
- County Attorney Harrold Hanser (Yellowstone Co.)
- Police officer Rondy Vogel (Billings)
- Eloy Scott Presiden P.T.A (Billings)
- Self Pres. MCDL-YC (Billings)

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34A
Rev. 1985

SB 263, 307, 342
3/21/89

WITNESS STATEMENT

NAME Laura Ellison BUDGET

ADDRESS 79 Gruber Ests, Clancy, MT 59634

WHOM DO YOU REPRESENT?

SUPPORT 263, 307, 342 OPPOSE AMEND No

COMMENTS: I've become very disgusted with the push to "protect" the needs of adults for pornographic material readily available — there are less obvious ways they can indulge in that without endangering young children and society in general. There is increasing evidence that porno material is dangerous to sexual deviates.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34A
Rev. 1985

SB 263, 307, 342

3-21-89

WITNESS STATEMENT

NAME JOE ELLISON BUDGET

ADDRESS 79 GRUBER EST, CLANCY

WHOM DO YOU REPRESENT? MYSELF

SUPPORT X OPPOSE AMEND

COMMENTS: Please Pass unamended SB 307, SB 263, SB 342.

Pornography isn't art its material that Tryes to excite the Passions in Humans. as Pornography has increased so have Crimes against against Women & Children. Investigators have found Pornography material in large amounts in the residence of Serial Killers of Women & Boys. Porno destroys the family unit and has led to divorce, Infidelity & an increase in the number of abortions.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34A
Rev. 1985

SB 263, 307, 342
3-21-87

WITNESS STATEMENT

NAME Florence Nelson BUDGET _____

ADDRESS 3049 Hondo Rd

WHOM DO YOU REPRESENT? Mathers,

SUPPORT S.B. 307 + 263 342 OPPOSE _____ AMEND _____

COMMENTS: If we don't have laws to protect women + children from exploitation by pornography, what laws are worth having + of value?

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34A
Rev. 1985

SB 263, 307, 342

3-21-89

WITNESS STATEMENT

NAME Bob Hollow BUDGET 0

ADDRESS Box 6017 Helena

WHOM DO YOU REPRESENT? Helena News, Inc

SUPPORT _____ OPPOSE ✓ AMEND _____

COMMENTS:

This bill would lead to total harrassment of all who sell magazines in Montana

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34A
Rev. 1985

SB 263, 307, 342
3-21-89

WITNESS STATEMENT

NAME Richard Miller BILL NO. SB 307 SB 342

ADDRESS Helena, MT DATE 3/21/89

WHOM DO YOU REPRESENT? Montana State Library

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: I have testified on a number of bills before this session of the Legislature. Of those bills, these two bills make me the most uncomfortable. Why? Because anyone who testifies against SB 307 and SB 342 appears to be in favor of pornography.

The truth of the matter is that these two bills are censorship, that is, they violate the freedom of expression guaranteed to us under the First Amendment to the Constitution of the United States. In addition, they duplicate, to a certain extent, statutes already in State law (under which minors are already protected) which appear to be working very well. But they throw the net of censorship too far, extending it through vague and far-reaching language which is open to widely varying interpretations. The First Amendment protects materials which almost by definition are offensive to someone. I may dislike something protected by the First Amendment. But I dislike even more the prospect of being denied the right to read, listen, or view these materials should I choose to do so.

Let me close with a quote I recently read: "If you ever doubt the value of intellectual freedom, as far as achieving democracy is concerned, check on the prevalence of that right in countries under a dictatorship."

Do we need any more convincing argument than the situation we hear so much about now — Salman Rushdie's Satanic Verses? The chilling effect legislation such as that proposed in SB 307 and SB 342 would have on our freedoms is not worth the price in a democracy.

I ask you to vote "DO NOT PASS" on these two bills. Thank you.

SB 263, 307, 342
3-21-89

WITNESS STATEMENT

NAME Stan Frasier BUDGET 0

ADDRESS Box 5841 Helena

WHOM DO YOU REPRESENT? Self

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: SB 263, SB 307, SB 342

I am opposed to the religous views of a few being forced on everyone! This is a religous issue and has no place even being considered for law.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34A
Rev. 1985

SB 263, 307, 342
3-21-89
10611

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. SB's 263, 307, 342 DATE MARCH 21, 1989

SPONSOR SEN. HOFMAN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Richard Miller	Helena — MT State Library		VSB 307 SB 342
Ruland Dion	1417-2 Ave No. Gt Falls	X	
DON NELSON	BOX 717 Kalispell	X	
KENNETH G. MANNING	645 Conrad Dr. #3 Kal.	X	
JON D. Berg	605 W. Missouri Deer Lodge	X	
Aubyn Curtiss	Fortine	X	
Kay Ommeren	713 Gabriel Missoula	X	
Shanks Copps	Helena South Vista	X	
MARK WATKINS	MISSOULA		X
Richard Swanson	583 S. Rodney Helena		X
Julia M. Saylor Keenan	523 State Helena		SB 307 X SB 342
Cathy Way	3013 8th Ave S.	X	
John L. Arntson	MT Catholic Conf	307 342 263 X	
Jim Cahill	Livingston	307 342	X
Bill Schrade	Belgrade 96 Forward	X	
MIKE SCHRADER	406 W. ROSEBUD, BELGRADE	X	
Jerry Skillman	Anyox Ferry Rd. Helena		X
	Helena		X
Linda Bluy	1431 Lyndale Helena		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

JUDICIARY COMMITTEE 2611

BILL NO. SB 283 - 307 - 342 DATE MARCH 21, 1989

SPONSOR SEN. HOFMAN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Chuck Swift	1431 LYNDALE		X
[illegible]	3035 [illegible]		X
~~[illegible]~~	~~[illegible]~~	~~X~~	
Walt Drysdale	Bigfork	X	
~~[illegible]~~	~~[illegible]~~		
[illegible]		X	
Sheila Cates	Helena		X
Connie French	Shelby		X
LARRY FLESCH	SHELBY		X
RANDEE RODNEY	MISSOULA CITY	X	
Lenne Rodney	" "	X	
Lynne A. Cornish	3835 Cheadle, St. E.H.	X	
Jeri Kittrie	1675 Spruce	X	
Amy Cottrill	1675 SPRUCE	X	
Kay Conzelman	514 N. 14th Bozeman	X	
Rep. Norm Wallin	HD #78	X	
[illegible]	Helena	X	
Sharon Hoforth	Helena	X	
Riley Hoforth	Helena	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DATE 3/21/97 3 of 1

COMMITTEE ON Pornography Bills - House JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppo
Dallas D Erickson	MCDL	304 342 263	X	
Howard Pickerill	Polson Theatres Polson.	304 342 263		X
Patty Carrell	Pres. Family Women's Lobby	304 342,263	✓	
[illegible] Blues-		307-342		X
Tracy M. Drakam	MCDL	304 342 263	✓	
Stan Frasier	Self	263 307 342		X
Larry R Bolt	The Video Station	307		X
Jeff Scott	Montana ACLU	307 342 263		X
Jean Matthews		307 342		X
Tony Cuhna	Montana City for Dog by law	307 342 263	X	
GARY CARRELL	Self	307 342 263	✓	
Bertha Bead	Self	all	✓	
Walter Vaden	Self	All	X	
Dorthy Paden	citizen	ALL	X	
Wendell Kirby	citizen	All		✓
Barry FEIST	CITIZEN	342/263		✓
Dan Osmundson	Executive Theatre			✓
DEANN ENGSTROM	CITIZEN	304	X	
David R Freauff	citizen	307, 342	X	
Jay Shellenberg	citizen	all 3	X	
Kay Hansen			X	
Charles Wallin	self	all 3	X	
Cheryl Nelk		all 3	X	
Linda Brown	self	all 3	X	
Sue Quigley	pres	all 3	X	
Louis A. Kropp	Kropp Enterprises	"	X	

(Please leave prepared statement with Secretary)

DATE MARCH 21, 1989 406 11

COMMITTEE ON HOUSE JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
[illegible]	MT LIBR ASSOCIATION MEV	SB 307 342		
[illegible] Blade	Booksellers Ass'n	SB 307 SB 342		X
Bonnie Steel	Video Rental Store Owner	SB 307 SB 342		X
IAN STEEL	VIDEO RENTAL STORE OWN	SB307 SB342		X
Russ Lawrence	American Booksellers	SB 307 SB 340		X
Diane Smith	MT Theatre Owners	SB 307 SB 342		X
[illegible] Klussmann	Excellence Theatres	SB 307 SB 342		X
Danny Wagner	Excellence - Billings	"		"
Gregory E Smith	Centre Cinema - Hardin	"		X
Ted Clark	Excellence Theatres	"		X
Pastor Greg Powell	First Baptist Ch. Lewistown	"	X	
David S. Lothrum	Calvary, Lewistown	"	X	
Russ Osenbach	Boulder, MT	"	X	
Bill King	Video Rentals	SB307 " "		X
Florence Nelson	Deerney Gallatin C	" "	X	
Cara Mussier	Gallatin Co Deerney	" "	X	
R E Mussman	" "	" "	X	
Gertrude Moe	Missoula Co	" "	X	
Lyla Amato	Havre	307 342		X
Joe Amato	Havre	" "		X
Carol J Smith	BILLINGS	" "	X	
Dan McGillivray	Billings	307 342 263	X	
Peyton Peery	Glasgow	307 342		X
Tom Ames	Kalispell	307 342		X
Denis Casler	Libby	307 342 263	X	
Terry Custer	"	"	X	

(Please leave prepared statement with Secretary)

DATE 3-21-89

COMMITTEE ON Judicial, House

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppo
Steve Doe				
Melinda Quivik	Butte Booksellers	307 304		X
Donald Johnson	Missoula	307 342 263	X	
Martha Olson	Thompson Falls, MT.	307 263 342	X	
Mary Pearson	Thompson Falls, MT	307-263 342	X	
ALLEN PEARSON	THOMPSON FALLS, MT.	307-263 342	X	
Alyson Puckerill	Polson MT	307-342 304		X
Sid Timmons	Billings MT	307-342		X
CORRY Skinner	Billings MT	307 342		
DeDeca Reno	Billings, MT	307-342		—
Jeffrey A Kenler	Billings, MT	307-342		
Gloria Hermanson	MT Cultural Advocacy Helena	307 & 342		L
Estelle & Stephen Esser	219 Park Ave Ro. Bez	307 263 342	X	
Lauretta Sekutka	1114 S 3rd, Bozeman	307, 263 342	X	
[illegible]	3010 W Montana Ave	307, 263 342		X
Jane Kotek	2229 Cannon Helena MT	307, 263 342		X
Dave E Nelson	MT. Adv. Council	"		X
Joe Ellison	79 Timber Tot. Canyon, MT	"	X	
Laura Ellison	" " "	263, 307 342	X	
Scott Crichton	Billings	"		X
Barbara Theroux	Missoula Booksellers	307 342		X
Grant A Merkin	Missoula - National Vols	307 342		X
Rusty Sato	HAMILTON MT	307 342 304		X
BLANK				
Bill Hyatt	Helena, MT	307/342	~~307~~	X
Sen Larry Stimatz	Sen	307 342 263	V	

(Please leave prepared statement with Secretary)

DATE March 21, 1989 6611

COMMITTEE ON House Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Carol Culver	Concerned Citizens	SB 307		X
Byd Culver	" "	SB 307		X
[illegible]	Dillon, MT			
Beverly Dodd	Great Falls, MT	SB 307	X	
Debbie Clark	Great Falls MT	SB 307	X	
Laurel Lacey	Great Falls MT.	SB 307	X	
Terry Church	Missoula, MT.	307	X	
Norma McKinnon	Male Mont	307	✓	
Gordon Church	male Mont	307	✓	
Tim Hendrickson	Butte Mont	307		X
Tim Hedal	Gt Falls Pub Lib.	307		X
Bob Hollow	Helena News Bureau	307		X
Gayle Paden	Concerned citizen	307, 263 342	X	
Margaret E. Heller				+
Myron Wolverton	MT. Assoc of Churches	307, 263, 342	X	
Mark Trafton	Cascade Co Tax Assn	263		X
Marc Racicot	MT AG	307	✓	
Marc Cramer	Helena	307	✓	
Chet Blaylock	State Senate	307		✓
Arnie Malina	Helena Film Soc.	307		✓
Walter Stewart	3400 Hill Ave Butte	307, 263 342		X
Joanne Shearer	~~357~~ Pro-Family Women's Lobby	307, 263 342	X	
[illegible]	Montana Taxpayers Assoc	"		X
Roger Tippman	self - Bozeman	307, 263, 342	✓	
Ed Dolezal	(self, Bozeman)	"	X	
Dave Andes	self (Mont Logging Assn)	307, 263, 342		X

(Please leave prepared statement with Secretary)

DATE MARCH 21, 1989 706

COMMITTEE ON HOUSE JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Shirley DeYoung		263 342 307	✓	
Dee Walker		263 342 307	✓	
Bethice Visser		263 342 307	✓	
Theresa Kingma		263 342 307	✓	
TOBIN WALLIN		263 342 307	✓	
Panton Wallin		263 342 307	✓	
Ida Mae Fresklick		263 342 307	✓	
Ruth Hofman		263 342 307	✓	
Ida M. Gunnink		263 342 307	✓	
DR VERRIEN GUNNINK		263 307 342	✓	
Bertha Brad			✓	
MIKE SCHRADER	church of Christ	263 342 307	✓	
Beth Schrader		263 342 307	✓	
Wilma Engstrom		263 342 307	✓	
R Moore		11		✓
Bryan Asay	Mt. Family Coalition	11	✓	
Landon B Kelley	Mt Helena Community Church	11	✓	
Rev. Steven Carlson	LUTHERAN CHURCH	263 342 307	✓	
Norine Cece	Self	263, 342 307	✓	
Francis Yaus	Self	263 242 307		✓
Robert H. Cooper	SELF	11	✓	
Betty McKinney	self	263 242 307	✓	
Norma Vandeveer	self & Pro-family Womens Lobby	263, 242 307	✓	
Lynn R. Kern	Family Life Center (Foursquare)	263, 242 307	✓	
Sharon Gafgath	Self	263, 242 307	✓	
Riley Gafgath	Self	263-242 307		

(Please leave prepared statement with Secretary)

DATE MARCH 21, 1989 8 of 11

COMMITTEE ON HOUSE JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
John C Bulen	Self	SB 307 263 342	X	
Gordon Church	Self	307 263 342	X	
Terry Church	Self	342 307 263	X	
Rev Joseph J. Clare	Evangelical Covenant Church	SB 307 263 342	X	
Everett Gilkilo	— — —	SB 307 263 342	X	
Keith E Jensen	Church of Christ	307	X	
Robert Coles	Church of Christ	307	X	
Helen Barber	Self	307 263 342	X	
Eleanor M Smith	Self	all but 307	X	
Barbara Henry	Calvary Community Church (MCDL)	307 342 263	X	
Laurel Lang	MCDL	307 342, 263	X	
Debbie Clark	MCDL	307, 342, 263	X	
Mike Blakeley	Roxy Theatre Forsyth	307 342		
Mrs Jan Keating	Self	307 342 263	X	
Marcia Campbell	MCDL Dolson	307 263 342	X	
Heath Campbell	Dolson	307 263 342	X	
CLE C. CAMPBELL JR	SELF	307 263 342	X	
Pauline Campbell	SELF	307 263 342	X	
Mary Louise Phelps	Self	307 263 342	X	
Claudia Doucette	Self	307 263 342	X	
Faye A Berg	Helena Chamber of Commerce	307 263 342	X	
Kenneth Berg	Self	307, 263 342	X	
Barbara Doucette	Self	307, 263, 342	X	
C Ford	self	307, 263 342	✓	
D. L. Richardson	P.O. Box 4721, Helena	265 307 342	✓	

(Please leave prepared statement with Secretary)

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. SB's 263, 307, 342 DATE MARCH 21, 1989

SPONSOR SEN. HOFMAN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John C. Bullen	Great Falls	X	
Ellen Taubache		X	
Kitty Cappelman		X	
Judith A. Rypkema	Bozeman, Mt	X	
Eleanor M. Smith	Self	X	
Joseph P. Chan	Helena	X	
Russell Hallett			
Diana K. Adams	Helena	X	
Jan D. Lee	Helena	X	
Betty McKinney	Helena	X	
CHARLES W. OGALIC	MT. Newspaper Assn		X
Mike Voeller	Lee Newspapers		X
Barbara Henry	Great Falls	✓	
Diana Gaub	Gt Falls	—	
Sue Lucas	Great Falls	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DATE 3/21/89

COMMITTEE ON SB 307 SB 342 SB 263

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Beverly Ward	Valley Community Church Assoc of Evangelicals	342, 307, 263	X	
Maura Gault	self	307, 342 263	X	
Judy Taylor	myself	307, 342 263	X	
Teresa Wheeldon	myself	263 307, 342	X	
Jurel Laney	self - MCDL	263 307, 342	X	
Barbara Henry	MCDL Calvary Community	307-342 263	X	
Ellen Klobucar	Henry & Books & Elder Wheel	307, 342		X
Douglas K. Schmitz	SELF	307-342 263	X	

(Please leave prepared statement with Secretary)

DATE March 21, 1989

COMMITTEE ON HOUSE JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
Beth O'Halloran	Mont. Fed of Teachers	SB 307, 342		✓

Closing by Sponsor: Sen. Gage expressed that this is a decent bill to start with for what can become, and in some instances, is a problem in our state. The study that was done by the Advisory Council indicates that. Regarding some of the concerns that were expressed, they need to keep in mind that most of those folks will not have to be dealt with other than for the payment of the taxes and the licensing. It is that small factor of having tough rules and tough decisions in order to keep them under control. This bill is not being brought before the committee as a perfect bill, it is being brought as a whole new part of the operation of state government with regard to gambling in Montana. Let's work with the industry for the next two years and when they find out where the ragged edges are they can address those problems during the next session.

DISPOSITION OF SENATE BILL 342

Motion: Rep. Addy motioned that SB 342 BE CONCURRED IN, motion seconded by Rep. Strizich.

Discussion: John MacMaster explained to the committee proposed amendments drafted by the subcommittee (EXHIBIT 10).

Amendments, Discussion, and Votes: Rep. Addy moved amendments 1-23, amendment 25 and delete amendment 24 (EXHIBIT 10), motion seconded by Rep. Rice.

Rep. Brooke, referring to amendment 23 understood that the word "nudity" was taken out of the bill. She has no problem with that, but thought that it was removed. Sid Thomas stated that that particular amendment was taken from another state and the idea was to focus on nudity alone; however, it may be more consistent if it is taken out. The committee agreed to leave the word "nudity" as it appears in amendment 23.

A vote was taken on the proposed amendments and CARRIED unanimously.

Recommendation and Vote: Rep. Addy motioned SB 342 BE CONCURRED IN AS AMENDED, motion seconded by Rep. Knapp. Motion CARRIED unanimously.

DISPOSITION OF SENATE BILL 307

Motion: Rep. Addy motioned SB 307 BE CONCURRED IN, motion seconded by Rep. Rice.

Discussion: John MacMaster explained to the committee proposed amendments drafted by the subcommittee listed as EXHIBIT 11.

Rep. Brown stated that his purpose in working with the subcommittee on these bills was to bring them in line as best they could with Montana law and codes with the policy decisions that the House has the right to make in regard to

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date March 23, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT			X
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO			
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH			X
REP. JOHN MERCER	X		
REP. LINDA NELSON			X
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

3/27/89
1:10 pm

STANDING COMMITTEE REPORT

March 27, 1989

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 342 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 8.
Following: "OF"
Insert: "OBSCENE"
Following: "MATERIAL"
Strike: "HARMFUL"

2. Page 1, line 15.
Strike: "Harmful"
Insert: "Display or dissemination of obscene material"

3. Page 1, line 17.
Strike: "nudity,"
Strike: ", sexual excitement,"

4. Page 1, line 20.
Strike: "it has a predominant tendency to appeal"
Insert: "its dominant theme appeals"

5. Page 1, line 22.
Strike: "nudity,"
Following: "conduct"
Strike: ","

6. Page 1, line 23.
Strike: "sexual excitement,"

7. Page 1, line 24.

Strike: "prevailing"
Insert: "contemporary"

8. Page 2, line 2.
Following: "minors."
Insert: "If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the material or performance may not be found to lack such value for the entire class of minors."

9. Page 2, line 6 and page 3, line 4.
Following: "videotape"
Insert: "(except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America)"

10. Page 2, line 7.
Strike: "an unmarried"
Insert: "a"

11. Page 2, lines 9 through 19.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections

12. Page 2, line 22 through line 2 of page 3.
Strike: subsection (6) in its entirety
Renumber: subsequent subsections

13. Page 3, lines 10 through 15.
Strike: "Reasonable" on line 10 through "minor" on line 15
Insert: "'Prurient interest in sex' means a shameful or morbid interest in sex or excretion"

14. Page 3, line 18.
Following: "perverted"
Strike: ";"
Insert: ". A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act."

15. Page 3, line 20.
Following: "genitals"
Insert: "or female breasts"

16. Page 3, line 25 through page 4, line 2.
Strike: subsection (11) in its entirety
Insert: "(9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality."

17. Page 4, line 4.
Following: "of"
Insert: "obscene"
Strike: "harmful"
Following: "to minors."
Insert: "(1)"
Renumber: subsequent subsections (1) through (3) as (a) through (c)

18. Page 4, line 6.
Strike: "negligently"
Insert: "knowingly or purposely"

19. Page 4, line 10.
Following: "displayed"
Insert: "obscene"
Following: "material"
Strike: "harmful"

20. Page 4, line 13.
Following: "view"
Insert: "or other reasonable efforts were made to prevent view of the material by a minor"

21. Page 4, line 16.
Following: "any"
Insert: "obscene"
Following: "material"
Strike: "that is harmful"

22. Page 4, line 20.
Strike: "harmful"
Insert: "obscene"

23. Page 4, line 21.
Insert: "(2) A person does not violate this section if:

(a) he had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

NEW SECTION. Section 3. Notice of violation. Before a county attorney may prosecute a person for a continuing violation of [section 2], he shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that he will be prosecuted if he does not desist, and determine that the violation continued for at least 3 days after notice was received. The person may seek a declaratory judgment on the question whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending."

24. Page 8, lines 15 and 18.
Strike: "3"
Insert: "4"

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Amendments to Senate Bill No. 342
Third Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster
March 23, 1989

1. Title, line 8.
Following: "OF"
Insert: "OBSCENE"
Following: "MATERIAL"
Strike: "HARMFUL"

2. Page 1, line 15.
Strike: "Harmful"
Insert: "Display or dissemination of obscene material"

3. Page 1, line 17.
Strike: "nudity,"
Strike: ", sexual excitement,"

4. Page 1, line 20.
Strike: "it has a predominant tendency to appeal"
Insert: "its dominant theme appeals"

5. Page 1, line 22.
Strike: "nudity,"
Following: "conduct"
Strike: ","

6. Page 1, line 23.
Strike: "sexual excitement,"

7. Page 1, line 24.
Strike: "prevailing"
Insert: "contemporary"

8. Page 2, line 2.
Following: "minors."
Insert: "If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the material or performance may not be found to lack such value for the entire class of minors."

9. Page 2, line 6 and page 3, line 4.
Following: "videotape"
Insert: "(except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America)"

10. Page 2, line 7.
Strike: "an unmarried"
Insert: "a"

EXHIBIT 10
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11. Page 2, lines 9 through 19.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections

12. Page 2, line 22 through line 2 of page 3.
Strike: subsection (6) in its entirety
Renumber: subsequent subsections

13. Page 3, lines 10 through 15.
Strike: "Reasonable" on line 10 through "minor" on line 15
Insert: "Prurient interest in sex" means a shameful or morbid interest in sex or excretion"

14. Page 3, line 18.
Following: "perverted"
Strike: ";"
Insert: ". A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act."

15. Page 3, line 20.
Following: "genitals"
Insert: "or female breasts"

16. Page 3, line 25 through page 4, line 2.
Strike: subsection (11) in its entirety
Insert: "(9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality."

17. Page 4, line 4.
Following: "of"
Insert: "obscene"
Strike: "harmful"
Following: "to minors."
Insert: "(1)"
Renumber: subsequent subsections (1) through (3) as (a) through (c)

18. Page 4, line 6.
Strike: "negligently"
Insert: "knowingly or purposely"

19. Page 4, line 10.
Following: "displayed"
Insert: "obscene"
Following: "material"
Strike: "harmful"

20. Page 4, line 13.
Following: "view"
Insert: "or other reasonable efforts were made to prevent view of the material by a minor"

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21. Page 4, line 16.
Following: "any"
Insert: "obscene"
Following: "material"
Strike: "that is harmful"

22. Page 4, line 20.
Strike: "harmful"
Insert: "obscene"

23. Page 4, line 21.
Insert: "(2) A person does not violate this section if:

(a) he had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the minor is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

NEW SECTION. Section 3. Notice of violation. Before a county attorney may prosecute a person for a continuing violation of [section 2], he shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that he will be prosecuted if he does not desist, and determine that the violation continued for at least 3 days after notice was received. The person may seek a declaratory judgment on the question whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending."

Renumber: subsequent sections

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DATE 3-23-89
HB SB 342

24. Page 7, line 18.
Strike: "and"
Strike: "[section 2]"

25. Page 8, lines 15 and 18.
Strike: "3"
Insert: "4"

SENATE BILL NO. 342

INTRODUCED BY HOFMAN, HANNAH, LEE, WALLIN, CLARK, KEATING, HARDING, DEBRUYCKER, KELLER, HOFFMAN, ELLISON, ZOOK, RICE, ANDERSON, SPRING, HIMSL, AAFEDT, VAUGHN, OWENS, THOMAS, PINSONEAULT, CRIPPEN, HARP, RASMUSSEN, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE DISPLAY AND DISSEMINATION OF OBSCENE ~~HARMFUL~~ MATERIAL TO MINORS; AMENDING SECTIONS 45-8-201 AND 45-8-203, MCA; AND REPEALING SECTION 45-8-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Definitions. As used in [this act], the following definitions apply:

(1) "~~Harmful~~ Display or dissemination of obscene material to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of ~~nudity,~~ sexual conduct, ~~sexual excitement,~~ or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) ~~it has a predominant tendency to appeal~~ its dominant theme appeals to a minor's prurient interest in sex;

(b) it depicts or describes ~~nudity,~~ sexual conduct, ~~sexual excitement,~~ or sadomasochistic abuse in a manner that is patently offensive to ~~prevailing~~ contemporary standards in the adult community with respect to what is suitable for minors; and

If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older minors the material or performance may not be found to lack such value for the entire class of minors.

(c) it lacks serious literary, scientific, artistic, or political value for minors.

(2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America).

(3) "Minor" means ~~an unmarried~~ a person under 18 years of age.

~~(4) "Negligently" means consciously disregarding a~~ risk or existence of circumstances of which a person should be aware to the degree that the risk deviates from the conduct of a reasonable person concerning:

(a) the character and content of any material or performance that is reasonably susceptible to examination; and

(b) the age of the minor. However, an honest mistake will constitute an excuse from liability if the defendant made a reasonable bona fide attempt to ascertain the true ~~age of the minor.~~

(4) ~~(5)~~ "Newsstand" means a stand that distributes or sells newspapers or magazines.

~~(6) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, the showing of any portion of the female breast below the top of the nipple with less than a~~

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(except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America)

~~full opaque covering, or the depiction of covered male genitals in a discernibly turgid state.~~

(5) (4) "Performance" means any motion picture, film, videotape, phonograph record, compact disk, tape recording, preview, trailer, play, show, skit, dance, or other exhibition played or performed before an audience of one or more, with or without consideration.

(6) (5) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

(7) (6) ~~"Reasonable bona fide attempt" means an attempt to~~ ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or a governmental or educational identification card or paper rather than relying solely on the oral allegations or ~~apparent age of the minor~~.

"prurient interest in sex" means a shameful or morbid interest in sex or excretion

(8) (7) "Sexual conduct" includes:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted; A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act.

(b) masturbation, excretory functions, or lewd exhibition of uncovered genitals; or female breasts

(c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.

~~(11) "Sexual excitement" means the condition of human~~

(9) "ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality;

~~male or female genitals when in a state of sexual stimulation or arousal.~~

NEW SECTION. **Section 2.** Public display or dissemination of obscene material ~~harmful~~ to minors. (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely ~~negligently~~:

(a) (1) display material that is harmful to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material ~~harmful~~ to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view; or other reasonable efforts were made to prevent view of the material by a minor

(b) (2) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material ~~that is harmful~~ to minors; or

(c) (3) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is ~~harmful~~ obscene to minors. (2) (See amendment #23)

New Section. Section 3. (see #23.)

NEW SECTION. **Section 4 3.** Penalties. (1) A person who is convicted of violating [section 2] is guilty of a misdemeanor and may be fined an amount not less than TO EXCEED $500 or BE imprisoned for A TERM not more than 1 month TO EXCEED 6 MONTHS, or both.

~~(2)--Each-day-that-a-violation-of-[section-2]-occurs-or continues--constitutes--a-separate-offense-and-is-punishable as-a-separate-violation.~~

~~(3)--Every-act,-thing,--or--transaction--prohibited--by [section--2]--constitutes--a--separate-offense-to-each-item, issue,-or-title-involved-and-is--punishable--as--a--separate offense.~~

~~(4)~~(2) For purposes of [section 2], multiple copies of the same title, monthly issue, volume and number issue, or other identical material constitutes a single offense.

Section 5. Section 45-8-201, MCA, is amended to read:

"45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;

(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of

18;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals to the prurient interest in sex;

(ii) portrays conduct described in subsection (2)(a)(i), (ii), or (iii) of--this--section in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this

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section, evidence shall be admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or

(e) purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions which are more restrictive as to obscenity than the provisions of this section ~~and 45-8-202 [section 2]~~."

Section 6. Section 45-8-203, MCA, is amended to read:

"45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no

financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. "Employee" does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under 45-8-201 and 45-8-202 [section 2] or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public."

NEW SECTION. Section 7. Repealer. Section 45-8-202, MCA, is repealed.

NEW SECTION. Section 8. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45, chapter 8, part 2, apply to [sections 1 through 4].

-End-